

In the Matter of:)
) Docket No.
Application for Certification) 99-AFC-2
for the Three Mountain Power)
Project [Ogden Energy, Inc.])

TUESDAY, DECEMBER 19, 2000

9:00 a.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Cynthia Praul, Commissioner Advisor

Ed Bouillon, Hearing Officer

STAFF PRESENT

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

Dick Ratliff

APPLICANT

Scott M. Turner

Nixon Peabody, Attorneys at Law

Michael H. Zischke

Morrison & Foerster

INTERVENOR

Marcy Crockett

Burney Resource Group

PUBLIC ADVISER

Roberta Mendonca

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1 P R O C E E D I N G S

2 PRESIDING MEMBER KEESE: Once again, I
3 am Bill Keese, Chairing the Committee. Mr. Ed
4 Bouillon is conducting the hearing, and Cynthia
5 Praul, my advisor, joins us -- Cynthia Praul joins
6 us momentarily.

7 We'll continue the hearing. Mr.
8 Bouillon

9 HEARING OFFICER BOUILLON: When we
10 concluded yesterday we had Linda Bond on the
11 stand, and we were discussing Exhibit 80, and we
12 gave the parties overnight to examine those
13 conditions and see if that further cross
14 examination. However, given some of the pre-trial
15 discussions that we had, and the presence in our
16 courtroom of a wonderful baby, we're going to call
17 at this time Maria Ellis, the Burney Resource
18 Group's witness on Biological Resources.

19 (Thereupon Maria Ellis was, by
20 the reporter, sworn to tell the
21 truth, the whole truth, and
22 nothing but the truth.)

23 THE WITNESS: I do.

24 MS. CROCKETT: Are we ready to proceed?

25 ///

1 TESTIMONY OF

2 MARIA ELLIS

3 called as a witness on behalf of the Intervenor,
4 having first been duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. CROCKETT:

8 Q Dr. Ellis, do you -- are you familiar
9 with the testimony that has been submitted for the
10 record?

11 A Yes.

12 Q Is it true and correct, to the best of
13 your knowledge?

14 A Yes, although I -- I do have a
15 correction or addition that I would like to make.
16 Is this the time to do that?

17 Q It is the time for corrections.

18 A In the Applicant's rebuttal to my
19 testimony, they -- they pointed out two areas that
20 they thought were notably lacking in my testimony,
21 and --

22 MR. TURNER: Excuse me, Mr. Bouillon.
23 This doesn't seem to be a correction to her direct
24 testimony. It seems to be rebuttal to the
25 Applicant's rebuttal. I think it's inappropriate.

1 HEARING OFFICER BOUILLON: Is she going
2 to correct something that's in her testimony, or
3 does she want to add to it?

4 BY MS. CROCKETT:

5 Q Dr. Ellis?

6 A They pointed out that --

7 HEARING OFFICER BOUILLON: No, no.

8 THE WITNESS: -- that I was lacking in
9 -- in response, and I wanted to correct that.
10 They had two items that they -- they thought were
11 notably absent, that I should correct.

12 MR. TURNER: That's surrebuttal, Mr.
13 Bouillon. I don't believe it's appropriate.

14 HEARING OFFICER BOUILLON: No, no.
15 She's not trying to correct what she wrote. She's
16 trying to add to what she wrote, it sounds like to
17 me.

18 MS. CROCKETT: Okay. Thank you.

19 HEARING OFFICER BOUILLON: There's
20 nothing wrong with what you wrote, is there?

21 THE WITNESS: No.

22 HEARING OFFICER BOUILLON: Good.
23 Continue.

24 BY MS. CROCKETT:

25 Q Was this -- was your testimony prepared

1 with your -- to the best of your professional
2 knowledge?

3 A Yes.

4 MS. CROCKETT: Thank you. The witness
5 is ready for cross.

6 HEARING OFFICER BOUILLON: Before we
7 begin cross examination, I just want to make sure
8 that what I have from Ms. Ellis is the testimony
9 we're speaking of at the present time.

10 I received a document dated November the
11 27th and docketed that same day, purporting to be
12 Testimony of Jeff Cook and Maria Ellis for the
13 Burney Resource Group, and the testimony of Maria
14 Ellis itself consists of four single-space
15 typewritten pages.

16 MS. CROCKETT: That should be correct.

17 HEARING OFFICER BOUILLON: And those
18 four pages, her declaration about the truth of it,
19 and her attached statement of qualifications,
20 consisting of three additional pages --

21 MS. CROCKETT: That's correct.

22 HEARING OFFICER BOUILLON: -- will
23 collectively be marked as Exhibit Number 82.

24 (Thereupon Exhibit Number 82
25 was marked for identification.)

1 HEARING OFFICER BOUILLON: You may
2 proceed, Counsel. Counsel?

3 MR. TURNER: Thank you, Mr. Bouillon.

4 CROSS EXAMINATION

5 BY MR. TURNER:

6 Q Good morning, Dr. Ellis.

7 A Good morning.

8 Q Congratulations on your very nice baby.

9 A Thank you.

10 Q You reviewed the Biological testimony
11 that was submitted by Three Mountain Power on
12 December 1st, did you not?

13 A The Biological testimony submitted on
14 December 1st? I reviewed their -- their
15 Biological Assessment, and I reviewed -- yeah, the
16 testimony and the rebuttal.

17 Q So would it be accurate to say that you
18 reviewed the 25 page document entitled Testimony
19 -- Direct Testimony on Biological Resources
20 sponsored by Mr. Garcia, Ms. Chainey-Davis, Mr.
21 Jackman, and Mr. McFadden?

22 A Actually, I -- I will say that I have
23 spent more time reviewing the Biological
24 Assessment that was presented earlier -- I don't
25 know the date -- and the rebuttal to my testimony,

1 than I did to the direct testimony. I've been a
2 little busy since December 1st.

3 Q I understand that. I'm very -- very
4 cognizant of that.

5 If I were to ask you to accept, subject
6 to check, that at page 16 of that testimony --

7 A Jeff has it.

8 Q Would you like a copy of the testimony?

9 A Oh --

10 Q I can provide you one, or --

11 A Sure.

12 Q Would that be easier?

13 A That would be easier. Jeff has his
14 hands full.

15 Q I would direct your attention, Dr.
16 Ellis, to the second full paragraph, the sentence
17 beginning, "The Shasta crayfish is not
18 documented." Do you see that?

19 A Yes.

20 Q You don't have any basis for disagreeing
21 with that statement, do you?

22 A No, although I have not surveyed many of
23 those springs for crayfish. And to my knowledge,
24 they have never been surveyed for crayfish.

25 Q But to the extent the sentence refers to

1 not documented to occur, you're not aware of any
2 documentation indicating there are Shasta crayfish
3 --

4 A Correct.

5 Q -- in those areas. I'm now referring,
6 Dr. Ellis, to the third page of your direct
7 testimony. And in particular, to the carry-over
8 paragraph, the second page.

9 A The which paragraph?

10 Q The carry-over paragraph from the second
11 page.

12 A Okay.

13 Q There, on page 3, at the -- at the top,
14 you suggest, do you not, that the area of proposed
15 impacts from the Three Mountain Power Project
16 should be revised to include Crystal Lake?

17 A Yes, I do.

18 Q In April 1998, you and Mr. Cook
19 finalized a report entitled "Survey of Shasta
20 Crayfish and Other Sensitive Aquatic Species in
21 the Lower Hat Creek Drainage"; correct?

22 A Yes.

23 Q And in the survey described in that
24 report, you indicated that you surveyed Crystal
25 Lake; correct?

1 A Correct.

2 Q Am I correct in stating that in that
3 report, you go on to state that most of the
4 shorelines of Crystal Lake were coded as, quote,
5 erosion, close quote, and that virtually 100
6 percent of the shoreline was exposed to cattle
7 grazing?

8 A At that time that was true. That is no
9 longer the case. There have not been cattle
10 grazing that area for two years now, and there
11 will not be cattle grazing that area. PG&E has
12 ceased the grazing lease, and the area is -- is
13 recovering nicely.

14 Q In the conclusion to that report, you
15 indicate in your summary that the impacts on
16 special status species in the Hat Creek drainage,
17 which includes Crystal Lake, I believe, you
18 categorize four impacts on special status species
19 within Crystal Lake. One is sedimentation and
20 sediment transport; correct?

21 A Uh-huh.

22 Q Another is cattle grazing and associated
23 impacts, which include the introduction of -- of
24 sediment to the lake; correct?

25 A Uh-huh.

1 Q And it's that one that you just said you
2 believe has been taken care of by PG&E's agreement
3 to not allow grazing there; correct?

4 A Right.

5 Q The third you listed as signal crayfish
6 and other introduced species; correct?

7 A Correct.

8 Q And the fourth you introduced as anglers
9 wading at the Crystal Lake outflow; correct?

10 A Right. Which has also been addressed
11 since that time, by Fish and Game.

12 Q With respect to the signal crayfish, you
13 note that, in -- in this report, the 1998 report,
14 you note that signal crayfish, and I'm quoting
15 from your report, can be predators, competitors,
16 and carriers of potential pathogens and parasites
17 of the Shasta crayfish; correct?

18 A Potential carriers. Yes.

19 Q Now, in that same passage of your direct
20 testimony, on page 3 again, top of the page, you
21 note that Crystal Lake has a known population of
22 Shasta crayfish; correct?

23 A Correct.

24 Q And you state in your 1998 report, do
25 you not, that Shasta crayfish in Crystal Lake

1 probably number in the low one hundreds now;
2 correct?

3 A That is probably correct.

4 Q You also state in that same report, do
5 you not, that Shasta crayfish in Crystal Lake have
6 decreased by an order of magnitude since 1978.

7 A Correct.

8 Q Am I correct in saying that you have
9 concluded, as a result of your work on the Shasta
10 crayfish, that the greatest current threat to its
11 continued existence is the signal crayfish?

12 A That is the conclusion that I have -- I
13 have drawn previously. And that would still be my
14 conclusion, but I would -- I would say that -- and
15 it is in the recovery plan, that anything that --
16 that impacts the discharge of springs has the
17 ability to -- to wipe out populations of Shasta
18 crayfish much quicker than signal crayfish do.
19 For Crystal Lake, it's dropped in an order of
20 magnitude since '78, but, interestingly, Shasta
21 crayfish have survived sympatrically, which means
22 in coexisting with signal crayfish in that site.

23 If something did impact either the
24 quality or quantity of discharge from the springs,
25 that could have a -- a very large effect, and it

1 could be a very rapid effect.

2 Q But I believe you just said that you
3 stand by your conclusion expressed in your
4 doctoral dissertation, and in the recovery plan,
5 which I believe you wrote the draft of, that the
6 current greatest threat to the continued existence
7 of the Shasta crayfish is the signal crayfish.

8 A I stand by my -- my comment that -- that
9 when I wrote those --

10 Q Would you --

11 A -- and I --

12 Q -- would you please, Dr. Ellis, answer
13 my -- I'm entitled to an answer to my question.

14 A The answer --

15 Q You can elaborate on redirect, if you
16 care to.

17 A The answer to your question is that
18 based on -- on the knowledge at the time, I would
19 stand by that conclusion. Anything that would
20 impact the springs would also be of -- of equal or
21 greater, because it would have a more immediate
22 impact. At the time that I wrote it, there were
23 no projects pending that -- that would seem to --
24 to be threatening either the quality or quantity
25 of discharge in the springs.

1 (Inaudible asides.)

2 MR. TURNER: Excuse me, Mr. Bouillon. I
3 think Mr. Zischke may have walked out
4 inadvertently with something I was going to turn
5 to next.

6 (Pause.)

7 MR. TURNER: Oh, I'm sorry. I have it
8 here. Never mind. I do have it. When you're
9 ready, Mr. Bouillon, I can proceed.

10 HEARING OFFICER BOUILLON: Go ahead.

11 BY MR. TURNER:

12 Q Dr. Ellis, on page 2 of your direct
13 testimony, paragraph 2-A, the last sentence of
14 that paragraph. Do you have that?

15 A Yes.

16 Q You would agree with me that that
17 passage contains a conclusion regarding hydrology;
18 correct?

19 A Yes.

20 HEARING OFFICER BOUILLON: I'm sorry,
21 Counsel. I couldn't hear the question.

22 MR. TURNER: I was asking Dr. Ellis, Mr.
23 Bouillon, if the last sentence of paragraph 2-A on
24 page 2 of her direct testimony is a conclusion
25 regarding hydrology. And Dr. Ellis answered yes.

1 HEARING OFFICER BOUILLON: Okay.

2 BY MR. TURNER:

3 Q Similarly, Dr. Ellis, on page 2, in
4 paragraph, in Section B, the second paragraph --
5 no, the first sentence of Section 2-B, actually,
6 the sentence beginning the Three Mountain Power
7 Project has the potential to negatively impact the
8 hydrology. Again, that's a hydrology based
9 statement; correct?

10 A Not all of it, no.

11 Q But the part that relates to impact the
12 hydrology of the inner mountain area is a
13 hydrology conclusion, is it not?

14 A It's a very basic hydrology, and it
15 states that it would have the potential to
16 negatively impact, which was supported by the
17 Staff's Assessment.

18 Q On the bottom of page 2, let me direct
19 you to the last sentence on the page, which
20 carries over to the top of page 3. And in
21 particular, the first, second, and third sentences
22 of that paragraph. Everything but the last
23 sentence, actually, of that paragraph.

24 The statements in that passage that I've
25 just referenced, those statements contain

1 hydrogeological conclusions, do they not?

2 A This is the -- the sentence that starts
3 on the second page and carries over to the
4 paragraph you already asked me questions about?

5 Q Yes. With the exception of the last
6 sentence, which discusses the known population of
7 Shasta crayfish in Crystal Lake. The remainder of
8 that paragraph is a -- a set of hydrogeologic
9 conclusions.

10 A Well, they're not conclusions. It --

11 Q Statements.

12 A -- suggests. They're based on -- on
13 hydrogeologic assessments made by Fox and by the
14 Staff, yes.

15 Q And -- but not by you?

16 A No. No, I'm reiterating points that
17 have been -- been made by -- by Fox and by the
18 Staff in Soil and Water Resources.

19 Q On page 3 of your testimony, paragraph
20 2-C, the second paragraph for that section. The
21 first, second, and -- and third sentences of that
22 paragraph, the ones beginning, the maximum rate,
23 the one beginning this is also the time, and the
24 third, by averaging the water use over a 12 month
25 period, et cetera. You would agree with me that

1 those statements are hydrogeologic based
2 statements; correct?

3 A Those are -- are statements of -- of
4 hydrology that are based on -- on conclusions made
5 by the Soil and Water Resources -- Staff for Soil
6 and Water Resources. Yes.

7 Q So, again, these are not your
8 conclusions. You're basically repeating what you
9 understand others' conclusions to be?

10 A I'm -- I'm supporting the Final Staff
11 Assessment on Soil and Water Resources, testimony
12 by Richard Sapudar and Linda Bond. Yes.

13 Q But these are not your conclusions;
14 these are their conclusions.

15 A I'm concurring with them, based on -- on
16 my knowledge and understanding. I am a scientist.
17 I am not a hydrologist. I've never claimed to be
18 a hydrologist. But I do have a reasonable grasp
19 of critical thinking. I can read reports and
20 understand them, and I am concurring and
21 supporting the testimony by the Staff on Soil and
22 Water Resources. Yes.

23 Q The bottom of page 3, your item number
24 3, this is in paragraph --

25 A Uh-huh.

1 Q -- 2-D, you would agree that that
2 statement, too, contains a conclusion regarding
3 the hydrology of the area; correct? Whether it's
4 yours or not. I'm not taking issue with whose
5 statement it is, I'm just asking you if that's a
6 hydrogeologic conclusion that you're --

7 A I am -- I am reiterating that the level
8 of uncertainty and general lack and depth of
9 understanding of the hydrology of the area and the
10 likely impacts on the springs and the biota they
11 support, is an issue. Yes.

12 Q But you did tell me a moment ago that
13 you're not holding yourself out as an expert in
14 hydrology --

15 A And I --

16 Q -- and hydrogeology.

17 A -- I never have. All I've done is ask
18 some simple questions that have never been
19 answered.

20 MR. TURNER: That's all I have, Mr.
21 Bouillon.

22 HEARING OFFICER BOUILLON: Thank you.

23 Ms. Holmes?

24 MS. HOLMES: No cross.

25 HEARING OFFICER BOUILLON: Ms. Crockett,

1 do you have any redirect?

2 MS. CROCKETT: Yes, I do. Thank you.

3 REDIRECT EXAMINATION

4 BY MS. CROCKETT:

5 Q Dr. Ellis, in the questions that were
6 posed to you on the lower Hat Creek, do you still
7 stand by your decision that the Crystal Lake area
8 should be included in the impact area for the
9 Three Mountain Project?

10 A Yes, I do. And that conclusion was also
11 supported in the testimony by the Staff on Soil
12 and Water Resources. They conclude that Crystal
13 Lake should be included in the springs that have
14 the potential to be impacted.

15 Q And under the greatest threat to the
16 Shasta crayfish, you had -- they talked about
17 sedimentation and anglers that had been addressed.
18 But since that time in that report, you say there
19 are other threats now.

20 A One of the --

21 Q Or a potential.

22 A There's the potential for other threats,
23 and it's something that came up when I was writing
24 the recovery plan. It was honestly things that I
25 didn't -- I didn't think of initially. Big

1 picture impacts to the springs, such as geothermal
2 development in the Medicine Lake Highlands, came
3 up, actually when I was writing the draft, and --
4 and that had the potential for -- and still has
5 the potential for a very large impact. It could
6 wipe out the majority of Shasta crayfish in the
7 Fall River if something went wrong, because that's
8 the recharge area for the springs.

9 Similarly, Three Mountain Power has the
10 potential to impact the discharge in the springs,
11 and that could have a significantly negative
12 impact on the crayfish.

13 Q You just stated that the recharge area
14 would be the mineral -- excuse me -- Medicine Lake
15 area?

16 A Medicine Lake Highlands is the recharge
17 area for the Fall River Springs.

18 Q How far away is that from Crystal Lake?

19 A That's very far, but it's not the
20 recharge area for Crystal Lake. Crystal Lake's
21 recharge area is the Lassen Highlands.

22 Q The Lassen Highlands.

23 A And that's supported by Rose's
24 dissertation and -- and research, and the
25 hydraulic -- hydrology paper.

1 Q And at this point, you still concur with
2 Staff that there is input from Hat Creek into the
3 Burney Basin.

4 A Yes, I support the Staff's assessment,
5 and -- and Dr. Rose's assessment, that there is
6 input from Hat Creek into the Burney Basin.

7 Q You have never stated that you were a
8 hydrologist, and that you are a scientist with
9 critical thinking training, and that you could
10 read reports, and therefore you do stand by your
11 previous statements in your testimony.

12 A If I understand what you just said,
13 yeah. I've never stated that I was a hydrologist.
14 I have stated that I am a scientist and that I
15 have the ability to -- to do critical thinking,
16 and to read reports, understand them, and -- and
17 make comments, judgments based -- based on them.
18 As well as to find flaws, areas where conclusions
19 or assumptions are made that are not supported by
20 data, inadequacies of data.

21 Q Is there any -- is there anything in
22 your testimony in the area of inadequacies or --
23 let me rephrase that.

24 With more clarification of the impact on
25 the springs, how would we achieve that?

1 A How would we achieve more clarification
2 on the impact of the springs? Well, I've thought
3 from the beginning that -- that -- well, first,
4 that the burden of proof should lie with the
5 Applicant, and the Applicant should provide
6 adequate data to determine both the extent of the
7 impacts, as well as the -- the area of impact, as
8 well as the extent of the impacts in those areas.

9 And the best way to do that would've
10 been to -- to do a full-scale study on the
11 hydrology of the area. Lawrence Livermore and
12 Associates would've been -- Lawrence Livermore
13 would've been the -- Tim Rose and Lee Davisson
14 would've been the logical people to do that,
15 because they had already done research in the
16 area. That would've brought us a lot closer than
17 what we are now.

18 And the studies that the Applicant has
19 done, I don't believe bring us any closer to
20 answering those questions.

21 Q In your professional opinion, what would
22 you like to see happen to quantify the springs and
23 their habitat before pumping?

24 A I believe that as a Condition of
25 Certification, that the -- that there needs to --

1 the Applicant needs to hire someone to collect
2 enough baseline data to accurately characterize
3 the base flows of the springs potentially affected
4 by the Three Mountain Power Project. And those
5 springs would be the ones outlined by the Staff in
6 the Soil and Water Resources on page 92, at the
7 top.

8 The Salmon Springs, the three Salmon
9 Springs, Rim of the Lake Springs, Sand Pit Road
10 Springs, Hat Creek Park South Spring, Canal
11 Spring, and Rocky Ledge Spring, and Crystal Lake,
12 should also be included in this group, because it
13 appears to be hydrologically connected to the
14 Burney aquifer, as indicated by groundwater
15 measurements and contours developed by Three
16 Mountain Power.

17 And -- and this should include any
18 seasonal trends in -- in the springs, if present,
19 which was argued by Three Mountain Power in their
20 rebuttal to -- to Jeffrey Cook's testimony. They
21 argue that there were seasonal trends in the
22 springs, and that's a whole new aspect that has
23 not been addressed or thought of. In general, I
24 think we think the springs don't have a lot of
25 seasonal discharge, but the Applicant has argued

1 that they do. In which case, we need to document
2 that, so that should be part of the baseline data
3 collection.

4 Second, I think there needs to be an
5 inventory of all aquatic and terrestrial mollusks,
6 amphibians, and crayfish present in the springs,
7 and that the methodology to do that inventory
8 needs to follow the standard protocols outlined by
9 U.S. Forest Service and BLM. I think those two
10 conditions need to be Conditions of Certification
11 before the -- any construction on the project
12 begins.

13 MS. CROCKETT: Thank you. Burney
14 Resource Group is finished with this witness.

15 MR. TURNER: Mr. Bouillon, perhaps the
16 Committee has questions, but I have just one
17 follow-up based on Ms. Crockett's redirect.

18 Dr. Ellis, are you familiar with -- I'm
19 sorry.

20 HEARING OFFICER BOUILLON: Ms. Ellis,
21 let me ask

22 HEARING OFFICER BOUILLON: Ms. Ellis,
23 let me ask you -- we have a Biological Assessment
24 that you claim is inadequate. And as I understood
25 your redirect testimony just a moment ago, you

1 tried to list the things that need to be done to
2 make that study -- assessment adequate; is that --
3 is that correct?

4 THE WITNESS: That is correct. Either
5 to make that assessment adequate, or -- or to be
6 done prior to the project, as a baseline
7 monitoring, because how else can you determine
8 what the impacts of the project are if you don't
9 have the baseline data.

10 HEARING OFFICER BOUILLON: Is that true
11 whether or not we include Crystal Lake in the
12 area?

13 THE WITNESS: Yes. That is true whether
14 or not we include Crystal Lake.

15 HEARING OFFICER BOUILLON: Is that true
16 whether or not you're correct in your adoption of
17 the opinions of others regarding the hydrology of
18 the area?

19 THE WITNESS: It's true until there is
20 consensus about the hydrology of the area. If
21 there were consensus among the experts on -- on
22 what the hydrological conditions of the area, what
23 the area of impact is, and the extent of those
24 impacts, then -- well, depending on what -- what
25 those conclusions were. If the conclusions were

1 no impact, I wouldn't -- I wouldn't be here.

2 But there is not consensus. I mean,
3 that's --

4 HEARING OFFICER BOUILLON: When you say
5 there is not consensus --

6 THE WITNESS: -- very clear.

7 HEARING OFFICER BOUILLON: Excuse me.
8 When you say there's not a consensus, which
9 experts are you speaking of, collectively? Name
10 all of them, please. The ones you say are --

11 THE WITNESS: Okay.

12 HEARING OFFICER BOUILLON: -- among whom
13 there is no consensus.

14 THE WITNESS: Okay. There's not
15 consensus among -- Staff does not agree with --
16 with the assessment of -- of Three Mountain Power
17 and their methodology for getting there. Dr. Rose
18 does not agree. There's not consensus among --
19 among the hydrologists with the Applicant.

20 HEARING OFFICER BOUILLON: Are you
21 saying that Dr. Rose does not agree with the
22 Staff?

23 THE WITNESS: No. Well -- no. No. I'm
24 saying that -- that the Applicant has put forward
25 one -- one side, or their opinion, and there is

1 not consensus with either the Staff or Dr. Rose.

2 HEARING OFFICER BOUILLON: And if the
3 Applicant and the Staff were to agree, would we
4 then have consensus?

5 THE WITNESS: I think if the Applicant
6 and the Staff and Dr. Rose agreed, then we would
7 have consensus.

8 HEARING OFFICER BOUILLON: Counsel.

9 MR. TURNER: I have just two
10 follow-up --

11 THE WITNESS: Which --

12 MR. TURNER: -- questions.

13 RECROSS EXAMINATION

14 BY MR. TURNER:

15 Q Dr. Ellis, are you familiar with the
16 document that was marked yesterday as Exhibit 79,
17 entitled Stipulation Between Three Mountain Power
18 and California Energy Commission Staff, relating
19 to the impact areas of Soils and Water and
20 Biological Resources?

21 A One moment.

22 MS. CROCKETT: I'm not sure Dr. Fox --
23 excuse me, Dr. Ellis had that data. The Burney
24 Resource Group, primarily myself, has that
25 stipulation. If she could see a copy of that?

1 Have you provided her a copy?

2 HEARING OFFICER BOUILLON: I'm looking
3 for mine at the moment.

4 MS. CROCKETT: I have mine -- Mr.
5 McFadden appears to have it.

6 (Inaudible asides.)

7 BY MR. TURNER:

8 Q You've seen that before, Dr. Ellis?

9 A Yes, I have. But I would like to --

10 Q My question was have you seen that
11 document, Dr. Ellis.

12 A Yes.

13 Q The second question I have for you is in
14 response to one of Ms. Crockett's redirect. You
15 identified two areas of study that you feel would
16 add to the understanding of these issues. Prior
17 to your appearance here today, in response to her
18 redirect, had you ever offered in a writing in
19 this proceeding those two study areas?

20 A I've verbally stated them. I have never
21 written them.

22 MR. TURNER: Thank you. That's all I
23 have.

24 HEARING OFFICER BOUILLON: Based on
25 those two questions, do you have any further redirect?

1 MS. CROCKETT: Yes, I do, just one
2 question.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. CROCKETT:

5 Q Dr. Ellis, would it be fair to say that
6 the -- that your recommendation for studies was an
7 ongoing evaluation of data submitted by multiple
8 parties, and things still not resolved, that you
9 finally came to these conclusions?

10 A That is -- that is correct. I had hoped
11 that the Biological Assessment would -- would more
12 adequately address the issues than it did.

13 MS. CROCKETT: Thank you.

14 MR. TURNER: One last question, Mr.
15 Bouillon.

16 FURTHER RECROSS EXAMINATION

17 BY MR. TURNER:

18 Q Dr. Ellis, in response to the question
19 that Ms. Crockett just asked you, I'm going to ask
20 you did it occur to you to include those
21 recommendations that you just offered on redirect
22 in your direct written filed testimony in this
23 case? Because you did not offer them in this.

24 A And that was a -- a shortcoming on my
25 part. I was due to go into labor momentarily. I

1 wrote the testimony early, before I -- even the
2 Final Staff Assessment was out, because the baby
3 could come at any moment. It was two weeks late.
4 And I didn't think I'd be writing it while I was
5 in labor.

6 MR. TURNER: That's all I have, Mr.
7 Bouillon.

8 MS. CROCKETT: One clarification on
9 timing. Her testimony was submitted prior to
10 Staff's --

11 HEARING OFFICER BOUILLON: That's a
12 matter of record.

13 MS. CROCKETT: It's a matter of record.
14 Thank you.

15 HEARING OFFICER BOUILLON: And she also
16 said that. She wrote it prior to receiving the
17 FSA. I think she just said that.

18 MS. CROCKETT: Great. Thank you.

19 HEARING OFFICER BOUILLON: Ms. Holmes,
20 do you have any questions?

21 MS. HOLMES: No, I don't.

22 HEARING OFFICER BOUILLON: Would you
23 like to offer her testimony?

24 MS. CROCKETT: I would like to offer her
25 testimony, and also since the hydrology study by

1 Dr. Fox of the area was submitted by the Burney
2 Resource Group, we also have a copy of that that
3 we'd like to offer as an exhibit, if it needs to
4 be offered. It's already -- I'm not sure if it's
5 already in the testimony, but Dr. Ellis does refer
6 to Dr. Fox's study, Staff refers to it, and we
7 would like to -- the Joint Intervenors want us to
8 make sure that that is entered into evidence, as
9 well.

10 HEARING OFFICER BOUILLON: As I
11 understand it, that's a study that never got into
12 final form. Is that correct?

13 MS. CROCKETT: That's correct, but
14 Staff --

15 HEARING OFFICER BOUILLON: Wait, wait.
16 Wait. And it is also -- several versions of the
17 draft, which may or may not have been docketed,
18 but it is a study that has been relied upon by
19 members of the Staff and by your witnesses. Is
20 that correct? As a basis for their own
21 conclusions?

22 MS. CROCKETT: And so stipulated by Dr.
23 Fox in her declaration.

24 MS. HOLMES: Mr. Bouillon, Staff relied
25 on the raw data that Dr. Fox collected, and it's

1 that raw data that is identified in the
2 declaration that Dr. Fox -- that Dr. Fox
3 authenticated.

4 HEARING OFFICER BOUILLON: I'm aware of
5 that.

6 MS. HOLMES: Okay.

7 HEARING OFFICER BOUILLON: The -- we
8 have filed -- I believe that -- we have accepted
9 as an exhibit that declaration, and therefore, in
10 effect, her testimony as to the accuracy of the
11 factual information in that report, as opposed to
12 the opinions in that report.

13 MS. CROCKETT: Correct.

14 HEARING OFFICER BOUILLON: And both your
15 witnesses, Staff's witnesses, and the Applicant's
16 witnesses, for that matter, are free to rely on
17 those facts in forming their opinions, which they
18 have put into evidence, or will be putting into
19 evidence. And to consider even Ms. Fox's
20 background opinions as the context in which to
21 form their own opinions, that does not make the
22 document itself admissible, unfortunately.

23 But you can make reference to it, as
24 they have, and we will take it for what it's
25 worth, but we are not making her report of her

1 opinions a part of this case.

2 MS. CROCKETT: We would -- could we so
3 stipulate that in her declaration she stipulates
4 to the facts and the accuracy of the data, and
5 that we would submit the report only under those
6 conditions, that so stated in Dr. Fox's
7 stipulation, to the accuracy of the data.

8 HEARING OFFICER BOUILLON: If that -- if
9 that data is otherwise incorporated into someone's
10 testimony, it's in that testimony. And so it --
11 we already have it.

12 MS. HOLMES: I think that the purpose
13 that we saw in having the declaration was that we
14 wanted to make sure that the raw data that Dr. Fox
15 collected became a part of the record, and that's
16 what we sought to have introduced and which was
17 admitted yesterday. Her declaration was admitted
18 as Exhibit 81.

19 My understanding was that that meant
20 that the raw data that's referenced in the
21 declaration is now part of the record. Staff used
22 that raw data in drawing its own conclusions on
23 hydrology.

24 HEARING OFFICER BOUILLON: I understand
25 that. And that raw data is incorporated within

1 your -- your own testimony, is it not?

2 MS. HOLMES; Well, it's relied upon
3 within our own testimony. I wouldn't say it's
4 incorporated into our own testimony.

5 HEARING OFFICER BOUILLON: My point is
6 you don't have to make an exhibit out of every
7 reference you use to gather data.

8 MS. HOLMES: Correct.

9 HEARING OFFICER BOUILLON: For instance,
10 when you -- sometimes when you file testimony, you
11 list the whole bibliography of where you got
12 information, such as United States Geological
13 Service, Fish and Wildlife Service publications.
14 We don't make exhibits of every one of those
15 documents, and we're not making an exhibit of Dr.
16 Fox's document. But we are taking -- we are aware
17 that the raw data is a part of this case, insofar
18 as it is incorporated by any party.

19 (Inaudible asides.)

20 HEARING OFFICER BOUILLON: Are there --
21 Ms. Crockett, let me ask you. Are there specific
22 pieces of raw data in that draft report upon what
23 you want to rely, that have not been brought up in
24 this proceeding in anybody's testimony?

25 MS. CROCKETT: Yes, there is, and that

1 was why in our -- in our subpoena, we wanted Dr.
2 Fox present to explain the facts of her data. And
3 that would've been why we wanted her here, and I
4 think we explained that in our subpoena.
5 Consequently, there are points made, strictly
6 facts that are in the report of Dr. Fox, raw data
7 used that are there.

8 HEARING OFFICER BOUILLON: Can -- in all
9 the testimony you have offered, can you give me an
10 example of what's in that report that you cannot
11 -- you don't feel you can use unless that report
12 is made an exhibit?

13 MS. CROCKETT: Very quickly, one of them
14 would be the global meteoric water line. I think
15 they differ substantially from -- from the Dames
16 and Moore report using the plotted data. And I
17 think -- I am not going to present myself as an
18 hydrogolist, but it would show a different
19 scientific plotting of the data. And --

20 HEARING OFFICER BOUILLON: Is that a
21 matter of fact, or a matter of opinion?

22 MS. CROCKETT: I think the plotting of
23 the line -- now, I would require a scientist to do
24 that. It's the data that I would refer to.

25 HEARING OFFICER BOUILLON: Now, do I

1 understand you to be presenting Mr. Cook, who is a
2 hydrologist?

3 MS. CROCKETT: Mr. Cook is not a
4 hydrologist. He is a geomorphologist. And he
5 will explain that -- excuse me. Mr. Cook, have
6 I --

7 HEARING OFFICER BOUILLON: No, wait,
8 wait. You don't --

9 MS. CROCKETT: -- stated that correctly?
10 I'm just checking on his certification. I don't
11 think Mr. Cook has presented himself as a
12 geologist.

13 HEARING OFFICER BOUILLON: I'll tell you
14 what. Let's --

15 MS. CROCKETT: Or a hydrologist.

16 HEARING OFFICER BOUILLON: -- let's
17 defer the ruling on that until after we've had Mr.
18 Cook on the stand.

19 MS. CROCKETT: Thank you.

20 HEARING OFFICER BOUILLON: Okay. I
21 don't believe the raw data in that report, one way
22 or the other, affects Ms. Ellis' testimony.

23 MS. CROCKETT: The -- the only raw data
24 in that report is that Dr. Cook does review the --
25 Dr. Ellis reviews Dr. Fox's report, and sees the

1 data with reference -- I'm choosing my words very
2 carefully to state a fact -- that the data
3 supports, due to the negative oxygen 18 levels,
4 Dr. Rose's evaluation of the hydrology of the
5 area. And Dr. Cook --

6 HEARING OFFICER BOUILLON: Ms.
7 Crockett, you really miss the point. This witness
8 is not a hydrologist, and she is not offering any
9 of her own opinions on hydrology.

10 MS. CROCKETT: Okay.

11 HEARING OFFICER BOUILLON: And she's not
12 going to offer anybody else's opinions as her own,
13 either. All right?

14 MS. CROCKETT: Thank you.

15 THE WITNESS: I did quote the Fox report
16 in my testimony. If, I mean --

17 MS. CROCKETT: It was just referenced.
18 I thought I saw it --

19 THE WITNESS: It appears the water from
20 Hat Creek basin enters the Burney basin south of
21 Brush Mountain.

22 HEARING OFFICER BOUILLON: Okay.
23 Counsel for the Applicant --

24 MS. CROCKETT: The Fox report, Fox 2000,
25 is on page -- oh, I'm sorry.

1 HEARING OFFICER BOUILLON: Counsel for
2 the Applicant was clear -- made specific
3 references to those passages to determine that, in
4 fact, they were hydrological opinions, and they
5 were not -- she was not expressing that opinion
6 herself, but, rather, using the opinions of
7 others.

8 MS. CROCKETT: Okay. Thank you.

9 HEARING OFFICER BOUILLON: So we'll
10 defer a ruling on -- we won't -- we will neither
11 mark nor admit or deny that exhibit at this time,
12 and I think that concludes this witness's --
13 everyone agree?

14 MS. CROCKETT: Burney Resource --

15 HEARING OFFICER BOUILLON: Ms. Ellis,
16 you're excused. And we'll call Mr. Cook.

17 MS. CROCKETT: Thank you.

18 Could we take a moment or two?

19 DR. ELLIS: Change the baby.

20 (Thereupon Jeffrey Cook was, by the
21 reporter, sworn to tell the truth,
22 the whole truth, and nothing but
23 the truth.)

24 THE WITNESS: Yes, I do.

25 ///

1 TESTIMONY OF
2 JEFFREY COOK

3 called as a witness on behalf of Intervenor,
4 having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. CROCKETT:

8 Q Mr. Cook, are you aware of the testimony
9 that was submitted in your name to this hearing?

10 A Yes, I am.

11 Q Is it true and correct, to the best of
12 your professional knowledge?

13 A Yes, it is.

14 Q Are there any corrections at this time?

15 A There are no corrections.

16 MS. CROCKETT: Thank you. The witness
17 is ready for cross.

18 HEARING OFFICER BOUILLON: Applicant, do
19 you have any --

20 MR. TURNER: No questions, Your Honor.
21 We're content with our rebuttal.

22 HEARING OFFICER BOUILLON: Ms. Holmes.

23 MS. HOLMES: No questions.

24 MS. CROCKETT: I guess that doesn't
25 leave me any recross.

1 (Laughter.)

2 HEARING OFFICER BOUILLON: That's
3 correct.

4 I had -- my outline indicated that the
5 Applicant had 120 minutes.

6 MS. CROCKETT: And they took that
7 yesterday.

8 HEARING OFFICER BOUILLON: They just set
9 a new record for speed.

10 MS. CROCKETT: Are we finished with Mr.
11 Cook?

12 HEARING OFFICER BOUILLON: I haven't
13 even marked his -- his testimony yet.

14 MS. CROCKETT: I'm sorry. May we -- we
15 would like to present his testimony.

16 HEARING OFFICER BOUILLON: We're going
17 to mark his testimony as --

18 MS. CROCKETT: Okay.

19 HEARING OFFICER BOUILLON: -- next in
20 order, which is Number 83. And since it's in the
21 same package as Maria Ellis', I will assume that I
22 am correct in -- six pages of testimony, his
23 declaration, and his -- three pages of
24 qualifications will collectively be marked Exhibit
25 83.

1 (Thereupon Exhibit Number 83 was
2 marked for identification.)

3 MS. CROCKETT: That's correct. Thank
4 you.

5 HEARING OFFICER BOUILLON: And are you
6 offering that at this time?

7 MS. CROCKETT: We are offering his
8 testimony to be submitted.

9 HEARING OFFICER BOUILLON: It will be
10 accepted.

11 (Thereupon Exhibit Number 83 was
12 received into evidence.)

13 HEARING OFFICER BOUILLON: If I might
14 have just a moment.

15 (Pause.)

16 HEARING OFFICER BOUILLON: Mr. Cook, is
17 there raw data in that draft report of Dr. Fox
18 upon which you relied in forming any of your
19 opinions?

20 THE WITNESS: Inasmuch as the
21 conclusions in that draft report, I relied upon in
22 forming some of my opinions.

23 HEARING OFFICER BOUILLON: But not the
24 raw data itself?

25 THE WITNESS: I did not use the raw

1 data. No.

2 MS. CROCKETT: May I ask him a question?

3 HEARING OFFICER BOUILLON: About that.

4 MS. CROCKETT: About that.

5 REDIRECT EXAMINATION

6 BY MS. CROCKETT:

7 Q Mr. Cook, when you were forming your
8 opinion, did you look at the raw data and the
9 negative oxygen samples --

10 A Yes.

11 Q -- to see if the conclusions were
12 correctly drawn in your opinion?

13 A I did.

14 HEARING OFFICER BOUILLON: Did you use
15 those?

16 THE WITNESS: I didn't -- I performed no
17 calculations on them.

18 HEARING OFFICER BOUILLON: Okay. I have
19 nothing further.

20 MS. CROCKETT: Excuse me?

21 HEARING OFFICER BOUILLON: I have
22 nothing further.

23 MS. CROCKETT: I have nothing further,
24 either. Thank you.

25 May the witness be excused?

1 HEARING OFFICER BOUILLON: Yes.

2 MS. CROCKETT: I need to confirm they
3 have some data that needs to be transferred to me,
4 and I ask -- ask for maybe a two minute recess to
5 pick up the --

6 HEARING OFFICER BOUILLON: We'll --
7 Counsel?

8 MR. TURNER: I was going to suggest that
9 maybe ten minutes now would be appropriate, having
10 set the record for giving this proceeding 120
11 minutes back.

12 HEARING OFFICER BOUILLON: You're in
13 private practice, aren't you? You think you
14 deserve a bonus.

15 (Laughter.)

16 MR. TURNER: Ten minutes is all I'm
17 asking. I -- I do need a few minutes to confer
18 with Mr. McFadden, because he's got some limited
19 supplemental direct on the negotiation regarding
20 the Soil and Water conditions that the parties
21 discussed this morning. So ten minutes would be
22 great, Mr. Bouillon.

23 HEARING OFFICER BOUILLON: I think ten
24 minutes is appropriate. I would also encourage
25 the parties to see if they can line up how we

1 should proceed with respect to what we have marked
2 as, I believe it's Exhibit 80. You had questions
3 last night. When we come back, if each of the
4 parties can advise me about whether or not they
5 have additional cross examination of Ms. Bond with
6 respect to Exhibit 80, I would appreciate it.

7 MS. CROCKETT: That would be my
8 question, is what is the order upon re-adjourning.
9 Are we going to do the Soil and Water errata, or
10 are we going to Biological?

11 MR. TURNER: We still have our Water
12 direct.

13 MS. CROCKETT: We're still doing Water.
14 Okay.

15 HEARING OFFICER BOUILLON: We just took
16 Mr. Cook out of order.

17 MS. CROCKETT: Okay. Thank you. That's
18 what I needed to confirm.

19 (Off the record.)

20 PRESIDING MEMBER KEESE: Back on the
21 record.

22 HEARING OFFICER BOUILLON: Let me ask
23 Ms. Holmes, regarding Ms. Bond's testimony, has
24 anyone indicated a desire to cross examine?

25 MS. HOLMES: No one has indicated one

1 way or the other.

2 HEARING OFFICER BOUILLON: Mr. Turner,
3 do you have a preference?

4 MR. TURNER: I'm sorry, I missed -- I
5 didn't hear you --

6 HEARING OFFICER BOUILLON: With regard
7 to Exhibit 80, the Conditions of Certification.

8 MR. TURNER: The Staff Errata, you're
9 referring to.

10 HEARING OFFICER BOUILLON: It is called
11 Errata, and that's making me crazy because I don't
12 think of it that way.

13 MR. TURNER: We certainly don't have any
14 questions of Ms. Bond regarding that Errata. In
15 lieu of that, we're prepared, when Mr. McFadden
16 takes the stand with the Applicant's Water
17 Resources testimony, to ask him just a couple
18 questions about the Applicant's view of the
19 exhibit, proposed Exhibit 80.

20 HEARING OFFICER BOUILLON: That's fine.

21 Ms. Crockett, do you have questions
22 about Exhibit 80 for Ms. Bond?

23 MS. CROCKETT: Are we discussing the
24 Errata?

25 HEARING OFFICER BOUILLON: Yes, it is

1 Errata.

2 (Laughter.)

3 MS. CROCKETT: No. I would also state
4 that we would have no cross examination of Ms.
5 Bond, but that we would put a witness on
6 representing -- and Counsel is aware of this --
7 Mr. Hathaway, as an Intervenor, to give his
8 evaluation of the conceptual design of the Errata
9 questions.

10 MS. HOLMES: I'm sorry, Ms. Crockett. I
11 think we're talking about two different things
12 here. One of the --

13 MS. CROCKETT: Oh.

14 MS. HOLMES: -- one of the issues that
15 came up this morning, Mr. Bouillon, was that Three
16 Mountain wanted to present some conceptual
17 concepts for modification of Staff's Errata, and I
18 believe that that's what Ms. Crockett is referring
19 to. But since they haven't mentioned it on the
20 record here, I wasn't -- I hadn't brought it up
21 myself. And, nor had I mentioned what Staff's
22 response to that would be.

23 HEARING OFFICER BOUILLON: Are you
24 offering Exhibit 80 at this time?

25 MS. HOLMES: I would like to.

1 HEARING OFFICER BOUILLON: Do you have
2 any objection to Exhibit 80, the Errata, being --
3 being put in evidence?

4 MS. CROCKETT: Just one moment.

5 (Inaudible asides.)

6 MS. CROCKETT: I have a procedural
7 question. I'm not quite clear that it being put
8 into evidence means that that would be the
9 final --

10 HEARING OFFICER BOUILLON: No.

11 MS. CROCKETT: We have no -- no problem
12 with it being put into evidence. Thank you.

13 HEARING OFFICER BOUILLON: What the
14 California Energy Commission itself decides after
15 a Presiding Member's Proposed Decision, that's the
16 only thing that will be final in this case. This
17 is just -- this is just their testimony about what
18 they would like to see at this time. It's not
19 even final with respect to them, probably, knowing
20 them as I do.

21 MS. CROCKETT: As -- as long as --

22 (Laughter.)

23 MS. CROCKETT: You are absolutely
24 correct. As long as that is on the record, then
25 we have no problem.

1 HEARING OFFICER BOUILLON: Mr. Turner,
2 do you have any objection?

3 MR. TURNER: Mr. Bouillon, we have no
4 objection to Exhibit 80 being marked and entered,
5 with the understanding that I don't believe either
6 of the two other active parties will object to my
7 asking Mr. McFadden, when he takes the stand, some
8 limited supplemental questions about the
9 Applicant's conceptual view as -- as Ms. Holmes
10 just described it.

11 HEARING OFFICER BOUILLON: One has
12 nothing to do with the other. Exhibit 80 will be
13 admitted.

14 (Thereupon Exhibit Number 80 was
15 received into evidence.)

16 MS. HOLMES: Mr. Bouillon, since the
17 issue has now been raised by the Applicant, I
18 think it's probably appropriate to let you know
19 that if Three Mountain wants to propose conceptual
20 changes to the Errata that Staff has prepared, we
21 would like to be able to have Ms. Bond recalled
22 for the limited purposes of providing direct
23 testimony on their proposal.

24 But I think it's appropriate to wait
25 until they've actually presented it on the stand

1 before we do that, but I did want to let people
2 know that we would be doing that, and that we had
3 discussed that with Burney Resources Group and
4 Three Mountain, and there was no opposition.

5 HEARING OFFICER BOUILLON: It's pretty
6 hard to determine the need or lack of need for
7 rebuttal testimony until you have something to
8 rebut.

9 MS. HOLMES: Correct.

10 HEARING OFFICER BOUILLON: At this time
11 we'll continue with the Water Resources portion of
12 this hearing. And we have concluded the Staff
13 witnesses, and Burney Resource Group witness. The
14 Applicant, please present your witnesses as a
15 panel, please?

16 MR. TURNER: Yes. We would call our
17 Water Resource witnesses, Mr. Sheahan, Mr. Hamer,
18 and Mr. McFadden.

19 (Thereupon N. Thomas Sheahan, W. Greg
20 Hamer, and Martin McFadden were, by
21 the reporter, sworn to tell the truth,
22 the whole truth, and nothing but the
23 truth.)

24 HEARING OFFICER BOUILLON: Would each of
25 you, starting with Mr. McFadden, please identify

1 yourself for the record, and state your
2 employment?

3 MR. McFADDEN: My name is Marty
4 McFadden. I'm the Vice President of Three
5 Mountain Power.

6 MR. SHEAHAN: My name is N. Thomas
7 Sheahan. I'm Principal Hydrogeologist for the
8 firm of URS and Dames and Moore.

9 MR. HAMER: My name is W. Greg Hamer.
10 I'm a hydrogeologist with URS Dames and Moore.

11 HEARING OFFICER BOUILLON: Mr. Turner.

12 MR. TURNER: Thank you, Mr. Bouillon.

13 DIRECT EXAMINATION

14 MR. TURNER: Panel Members, did you
15 prepare the direct testimony on Soil and Water
16 Resources that was submitted by the Applicant on
17 December 1, 2000?

18 MR. SHEAHAN: Yes.

19 MR. HAMER: Yes.

20 MR. McFADDEN: Yes.

21 MR. TURNER: And did that direct
22 testimony contain 11 included exhibits?

23 MR. SHEAHAN: Yes.

24 MR. HAMER: Yes.

25 MR. McFADDEN: Yes.

1 MR. TURNER: Mr. Sheahan and Mr. Hamer,
2 was a copy of your qualifications submitted with
3 that testimony?

4 MR. SHEAHAN: Yes, it was.

5 MR. HAMER: Yes.

6 MR. TURNER: Mr. McFadden, were your
7 qualifications submitted with the Applicant's
8 direct testimony on Air Quality?

9 MR. McFADDEN: Yes.

10 MR. TURNER: Will the parties stipulate
11 to the qualifications of these witnesses at this
12 time?

13 HEARING OFFICER BOUILLON: The Committee
14 will accept their qualifications.

15 MR. TURNER: Thank you.

16 Mr. Sheahan, did you prepare the
17 rebuttal testimony on Water Resources which was
18 accompanied by one appendix and submitted by the
19 Applicant on December 7th, 2000?

20 MR. SHEAHAN: Yes.

21 MR. TURNER: Panel Members, do you have
22 any corrections or modifications to either the
23 direct testimony or the rebuttal testimony at this
24 time?

25 MR. HAMER: No.

1 MR. SHEAHAN: Yes, I do.

2 MR. TURNER: Would you please indicate,
3 Mr. Sheahan, what those corrections are, and which
4 piece of testimony that is?

5 MR. SHEAHAN: Yes. First I'd like to
6 turn to our direct testimony, on page 1. The
7 second full paragraph under 1-C, the fourth line
8 at the left-hand side, the number of years of
9 professional experience for Mr. Hamer should be
10 22.

11 MR. TURNER: And is there another
12 correction?

13 MR. SHEAHAN: Yes. On page 6, the
14 paragraph under the heading B, Hat Creek Basin,
15 the second line, the number 600 should be 420.
16 And further down in that line, the word "three"
17 should be "two".

18 MS. CROCKETT: I'm sorry, could you
19 repeat that?

20 MR. SHEAHAN: Yes. On page 6 of the
21 direct testimony, under the heading Hat Creek
22 Basin, the first full paragraph, second line, the
23 numeral, the number 600 should be 420. And
24 further down in that same line, the word "three"
25 should be "two".

1 The next item is also in that same
2 document on page 16. Under paragraph 4-A, the
3 heading Burney Basin Discharge, the fifth line
4 down at the right-hand side of that line, the word
5 "reduction" is misspelled. So r-e-c-u-t-i-o-n
6 should be r-e-d-u-c-t-i-o-n.

7 And I have one more in the rebuttal
8 testimony.

9 MR. TURNER: Would you please indicate
10 which passage of the rebuttal testimony that
11 occurs in, Mr. Sheahan?

12 MS. CROCKETT: Is there an extra copy of
13 the rebuttal? Unfortunately, Dr. Ellis and Mr.
14 Cook -- oh, thank you. Never mind, we've got an
15 extra. I'll just note -- go ahead and continue.

16 MR. SHEAHAN: I'm sorry. Give me just a
17 moment. I seem to have misplaced my notes on
18 this.

19 (Pause.)

20 MR. TURNER: Mr. Sheahan, let me just
21 refresh your recollection. I think the passage
22 you wanted to correct is on page 6. It is the
23 misspelling of the word "cumulation" in the first
24 full paragraph, in the middle of that page.

25 MR. SHEAHAN: That -- that is the

1 correction. Sorry, I'm just trying to find -- oh,
2 I'm sorry, I have it here now. It is page 6.

3 MR. TURNER: And the correction you wish
4 to make is what?

5 MR. SHEAHAN: The second line of the
6 first full paragraph on that page, the word
7 "cumulation" should be "cumulative".

8 MR. TURNER: Does that conclude the
9 corrections and modification to your testimony?

10 MR. SHEAHAN: Yes.

11 MR. TURNER: Panel Members, is this
12 testimony, both direct and rebuttal, as
13 appropriate, true and correct to the best of your
14 knowledge?

15 MR. HAMER: Yes.

16 MR. SHEAHAN: Yes.

17 MR. McFADDEN: Yes.

18 MR. TURNER: You are aware, are you not,
19 that the Applicant and the CEC Staff entered into
20 a stipulation regarding Water and Biological
21 Resources on December 7th, 2000?

22 MR. SHEAHAN: Yes.

23 MR. HAMER: Yes.

24 MR. McFADDEN: Yes.

25 MR. TURNER: And have you reviewed that

1 stipulation?

2 MR. HAMER: Yes.

3 MR. SHEAHAN: Yes, I have.

4 MR. McFADDEN: Yes.

5 MR. TURNER: Mr. Sheahan and Mr. Hamer,
6 do you agree with its provisions as it relates to
7 -- as those provisions relate to Water Resources?

8 MR. SHEAHAN: Yes, I agree with that.

9 MR. TURNER: And Mr. Hamer?

10 MR. HAMER: Yes, I agree also.

11 MR. TURNER: Mr. Sheahan, are you
12 familiar with the final Environmental Impact
13 Report prepared for the East Side Aggregates
14 Project, which has been referred to as the Hat
15 Creek Environmental Impact Report earlier in this
16 proceeding?

17 MR. SHEAHAN: Yes.

18 MR. TURNER: And have you reviewed that
19 EIR?

20 MR. SHEAHAN: Yes, I have.

21 MR. TURNER: Mr. Sheahan, is there any
22 information in that EIR that would cause you to
23 change any of your conclusions regarding the Water
24 Resource impacts of the Three Mountain Power
25 Project?

1 MR. SHEAHAN: No.

2 MR. TURNER: Mr. Sheahan, have you
3 reviewed the Applicant's document entitled
4 Opposition to the Burney Resource Group's Report
5 -- Request for Delay, the Applicant's opposition
6 document having been filed with its Prehearing
7 Conference Statement, and is now Exhibit 70 in
8 this proceeding; have you reviewed that document?

9 MR. SHEAHAN: Yes, I have.

10 MR. TURNER: Would you please refer to
11 pages 6 and 7 of that document now, Exhibit 70.

12 MR. SHEAHAN: I have that document now.

13 MR. TURNER: I'm specifically referring
14 you to the two paragraphs of Section 2-A, on pages
15 6 and 7.

16 MR. SHEAHAN: Yes.

17 MR. TURNER: Do you agree with the
18 factual statements on Water Resources contained in
19 those two paragraphs?

20 MR. SHEAHAN: Yes, I do.

21 MR. TURNER: Based on your review of the
22 Hat Creek project EIR, and your familiarity with
23 the Three Mountain Power Project, in your opinion
24 does the Hat Creek EIR indicate any new
25 significant cumulative impact of the Three

1 Mountain Power Project that would occur if the Hat
2 Creek Project were approved?

3 MR. SHEAHAN: No. No new cumulative
4 impact.

5 MR. TURNER: Similarly, in your opinion,
6 does the Hat Creek EIR indicate that any
7 cumulative impact of the Three Mountain Power
8 Project would be substantially more severe if the
9 Hat Creek Project were approved?

10 MR. SHEAHAN: No, it does not.

11 MR. TURNER: Mr. McFadden, would you
12 please state Three Mountain Power's position with
13 respect to the Soil and Water Resource Conditions
14 of Certification, as that position exists, based
15 on the conversations that Three Mountain Power has
16 had with the other parties to the case over the
17 last several days?

18 MR. MCFADDEN: Yes, I would. In the
19 Soil and Water Resources Conditions of
20 Certification, there are critical business issues
21 which are intertwined with the technical issues,
22 and Three Mountain Power has been working with
23 Staff and the other parties to -- to come to an
24 agreement on a series of conditions that work for
25 all the parties, and at the same time ensure that

1 the impacts of the project are mitigated to a
2 level below the level of significance.

3 We agree with, and I believe the other
4 parties do, but I can't speak for them, we agree
5 with the Water conditions, Soil and Water 1
6 through 8 and 14, in the Staff's Errata dated
7 December 18th. We are comfortable that we can
8 achieve changes to the other conditions that will,
9 at the same time that they protect local well
10 owners and ensure that the impacts are reduced to
11 a level below significant, also meet the needs of
12 all of the parties. And we have been working with
13 the Staff on these conditions, and with the other
14 parties, as well, and will continue to do so.

15 Conceptually, we need that the
16 Conditions of Certification be clear and provide
17 certainty and finality. The completion of
18 mitigation and its verification cannot depend upon
19 a third party agreement. The conditions that are
20 still, as it were, open, deal with technical
21 issues and intertwined verifications and
22 commercial issues.

23 First, there is a specific capacity
24 test, which I believe is the subject of Soil and
25 Water 8 in the Errata. And we've come to an

1 agreement on that, but it provides the input data
2 for the rest of the framework. The specific
3 capacity test verifies that the wells have certain
4 characteristics, and the characteristics that the
5 wells have provide input to the preparation of an
6 aquifer test, preparation and completion of an
7 aquifer test.

8 The aquifer test will calculate -- will
9 provide the -- or, well, excuse me. The specific
10 capacity test will provide the parameters
11 necessary to complete an aquifer test which, in
12 turn, will provide the parameters necessary to
13 calculate well interference, which is the issue at
14 hand, basically.

15 In the aquifer test we need that the
16 Compliance Project Manager of the California
17 Energy Commission timely review and approve that
18 the work plan that's required to be developed
19 meets the objectives of the Conditions of
20 Certification. A work plan needs to be -- needs
21 to be determined following the -- the conclusion
22 of the specific capacity test. The specific
23 capacity test information is prerequisite to a --
24 an aquifer test, and it's not possible to develop
25 an aquifer test at this time. So we need timely

1 review and approval so that the work plan can
2 clearly be stated that it meets the objectives of
3 the Conditions of Certification.

4 The work plan also must include the
5 methodology under which the interference
6 calculations will be performed. And we -- we need
7 timely compliance project management review of the
8 final report to affirm that we have followed --
9 followed the work plan.

10 Following the completion of the aquifer
11 test, we will now have the data necessary to
12 calculate the potential well interferences. The
13 well interference methodology would be previously
14 approved in the aquifer test methodology. We need
15 an objective trigger for mitigation based on the
16 interference impacts that are -- that are
17 calculated by the well interference calculation.

18 The trigger should be, as the Staff has
19 stated, five feet or more over the 30 year life of
20 a plant of calculated draw-down, so that -- that
21 is to say that if there is five feet or more
22 calculated draw-down, using the calculation
23 period, the 30 year expected life of the plant, in
24 an existing well, then that -- that well may be
25 subject to -- to mitigation. And for the

1 calculation of potential well interferences, we
2 need timely review that the calculation was
3 performed in accordance with the work plan.

4 Then we move to impacts. We've finished
5 the -- the technical aspects and the conditions
6 that I just talked about are more to the technical
7 issues, and I don't think we'll have a problem
8 resolving those. But then the question comes,
9 what happens, how do we determine if there is an
10 impact now that we've calculated there is a
11 potential impact.

12 And because we're in the process of
13 mitigating prospectively a projected long-term
14 impact, we think there's -- there's several
15 criteria that are appropriate for residential well
16 -- residential well impacts. First of all, the --
17 the well must be in the group that's calculated to
18 have a potential impact. It must be in service at
19 the time of certification. And the well must then
20 become incapable of providing the well owner's
21 needs.

22 And to determine if these criteria are
23 met, especially that last criteria, we do need to
24 obtain information and access from well owners.
25 To the extent that well owners would not provide

1 us with the access or information, or are
2 unresponsive, we -- we need to be deemed to have
3 met the Condition of Certification. However,
4 that's not to say we're shutting the door on
5 someone if they -- they lately come up and say --
6 respond late. We just need to be able to move
7 forward with the project in the -- in the event
8 that someone is not immediately, or -- or
9 reasonably cooperative in providing the
10 information.

11 But when we've obtained the information
12 and necessary access, we will engage independent
13 contractors who can assess the information that
14 the well owner provides, and the specific physical
15 characteristics of their well and situation, and
16 propose a mitigation measure from the list of
17 mitigation measures that are contained in the
18 Condition of Certification. We see that the
19 spectrum of Conditions of Certification would
20 range -- or Conditions -- excuse me -- mitigations
21 in the Condition of Certification, would -- would
22 run from well bowl lowering; reboring the well, if
23 necessary; replacing the driver, be it a motor or
24 an engine; or perhaps, in an extreme case, the
25 replacement of -- of the entire well.

1 But we would -- would propose these,
2 what we believe the appropriate mitigation measure
3 is, based on engaging an independent consultant or
4 expert to -- to assess the specific
5 characteristics of the -- the well -- of the well
6 owner's circumstances. We would provide the well
7 owner an opportunity to provide input into what
8 the appropriate mitigation is. But we would
9 present the list of impacted wells and proposed
10 mitigations to the Compliance Project Manager, who
11 would ratify the choice or select another
12 mitigation from -- from the list that's contained
13 in the Conditions of Certification.

14 Having the California Energy Commission,
15 through its Compliance Project Manager, ratify or
16 select the mitigation from the list, is consistent
17 with CEQA's requirement that mitigation be
18 selected by the agency that's making the -- the
19 CEQA determination.

20 Further, the -- the selection of a -- of
21 a mitigation from a specific range of mitigations
22 is critical from a business perspective, yet it
23 ensures that any nearby well owner is protected.
24 TMP will then take the selected mitigation to the
25 new well owner, and -- and implement this, and

1 effect this mitigation.

2 The same things that I've just outlined
3 for the residential wells apply also to
4 agricultural and industrial and commercial wells.
5 However, there's an additional requirement that we
6 propose for compensation for the increased energy
7 costs that may -- that may be caused by our
8 impact. We propose to compensate for the
9 increased energy costs on an annual basis, paid
10 prospectively, with a true up at -- at year-end.

11 One of the areas of discussion is when
12 will the tests occur. And TMP believes that the
13 specific capacity in aquifer tests which provide
14 the input data for this scheme, can be completed
15 prior to start-up. And, in fact, we -- we believe
16 that they can be. But there is a -- because of --
17 of technical issues, a possibility that sufficient
18 well -- excuse me, sufficient storage in the
19 Burney Water District system might not be
20 available to complete the tests, and if that's the
21 case, the tests would need to be completed during
22 commissioning.

23 But if the tests are not completed
24 during start-up, and any of the wells in the
25 impacted area go dry, as a safety net we will

1 immediately, on receipt of notice, mitigate by
2 providing alternate water supply to a well owner
3 until the permanent mitigation can be selected and
4 implemented, as described above.

5 So I think that with these conditions
6 that provide the clarity and certainty and
7 finality, that we -- we have a scheme that
8 mitigates all of the water impacts below a level
9 of significance.

10 MR. TURNER: Mr. Sheahan, you have just
11 heard Mr. McFadden describe an approach to well
12 interference mitigation. In your opinion, will
13 the approach outlined by Mr. McFadden assure that
14 any significant well interference impacts will be
15 mitigated as he says, to a less than significant
16 level?

17 MR. SHEAHAN: Yes.

18 MR. TURNER: The Water Resources Panel
19 of the Applicant is available for cross
20 examination, Mr. Bouillon.

21 HEARING OFFICER BOUILLON: Ms. Holmes.

22 MS. HOLMES: I have just -- let me have
23 just one minute.

24 I just have one question with, again,
25 notification to the Committee that we would like

1 the opportunity to provide a response to the
2 proposal that's just been made.

3 CROSS EXAMINATION

4 MS. HOLMES: The question I have is
5 whether or not it's a fair statement that Three
6 Mountain is in agreement with the Staff's Errata
7 with respect to the Conditions of Certification
8 that apply post completion of the mitigation with
9 respect -- post completion of the project
10 operation, with the exception of the fact that you
11 wish to drop the one-time lump sum payment. Is --
12 is that a fair characterization?

13 MR. TURNER: I believe Mr. McFadden
14 should respond to that.

15 MR. McFADDEN: I have to spend a minute
16 looking at this, because it's changed -- changed
17 many times, and there's another area of concern
18 that I want to make sure has been -- has been
19 deleted.

20 With the schema, I -- let me, if I can
21 ask you a question rather than try to read the
22 whole thing. Has the condition that -- that the
23 plant be -- operate in a dry cooling mode only
24 been removed with -- in this --

25 MS. HOLMES: No, that wasn't my

1 question. Perhaps if I phrase it in a different
2 way it would help.

3 Do you have any objections to the
4 Conditions of Certification as proposed by Staff
5 that go into effect after mitigation has been
6 approved by the CEC, other than the fact that you
7 wish to drop the one-time lump sum payment?

8 MR. TURNER: Ms. Holmes, could you
9 specify which --

10 MR. McFADDEN: Yeah.

11 MR. TURNER: -- particular post
12 certification condition you would ask Mr. McFadden
13 to look at? I think that would help him.

14 PRESIDING MEMBER KEESE: I think it's
15 13.

16 MS. HOLMES: Well, I know that --

17 PRESIDING MEMBER KEESE: Page 10.

18 MS. HOLMES: -- that when we discussed
19 them this morning, they re-numbered the
20 Conditions, but I'll refer to the numbers that are
21 in the -- that are in --

22 MR. TURNER: I think that would help
23 him, because he's working with the same document
24 you are, I believe.

25 PRESIDING MEMBER KEESE: Page 10.

1 MS. HOLMES: I'm referring to -- I'll
2 withdraw the question and we'll deal with it on
3 direct. That'd be much easier.

4 HEARING OFFICER BOUILLON: No -- no
5 further --

6 MS. HOLMES: No other questions.

7 HEARING OFFICER BOUILLON: And is that
8 true with respect to both the Conditions of
9 Certification and the Water testimony, in general?

10 MS. HOLMES: Yes.

11 HEARING OFFICER BOUILLON: Ms. Crockett?
12 and I'll remind you that we're not only talking
13 about the Errata and those Conditions of
14 Certification, and the proposal put forth by Mr.
15 McFadden, but by all of the Water Resources
16 testimony that was noted in response to Mr.
17 Turner's questions.

18 MS. CROCKETT: The -- excuse me, the
19 Burney Resource Group will deal with the Errata
20 first.

21 MS. CROCKETT: We're in agreement in
22 many areas with Staff, but there are some
23 conceptual concerns that we have, and -- which
24 Staff and Three Mountain are aware of. And a lot
25 of it is language and some of it is a concern that

1 in areas of verification, maybe a little bit more
2 clarification on timelines.

3 HEARING OFFICER BOUILLON: Do you have
4 some questions for these witnesses about that?

5 MS. CROCKETT: I think -- okay. We will
6 deal with those direct with Ms. Bond, on the
7 Errata.

8 On the water -- the water -- no, on
9 their Water testimony, I have a couple of
10 questions.

11 CROSS EXAMINATION

12 MS. CROCKETT: It would be directed to
13 Mr. Sheahan.

14 Are you familiar with Dr. Rose and Dr.
15 Fox's calculations on water contributions of
16 amounts of water that go over Burney Falls?

17 MR. SHEAHAN: I'm familiar with some of
18 the documents. Could you direct me to the
19 specific ones you're referring to, please?

20 MS. CROCKETT: Absolutely. Let's talk
21 about Dr. Rose's calculations that were discussed
22 yesterday on his May 22nd letter.

23 Okay, I'm going to do this from memory.
24 I don't have the letter specifically right in
25 front of me.

1 MR. SHEAHAN: If you could bring me a
2 copy it might be easier.

3 MS. CROCKETT: We have this --

4 HEARING OFFICER BOUILLON: I have a --
5 Ms. Crockett, I have a letter dated May the 23rd.

6 MS. CROCKETT: It might be in one of
7 theirs, because it wasn't one of their submittals.
8 Thank you, Mr. Bouillon.

9 HEARING OFFICER BOUILLON: And that is
10 Exhibit --

11 MR. TURNER: If it would help, Ms.
12 Crockett, I believe you're referring to the Dr.
13 Rose memo dated May 23rd, that's Exhibit 9 to the
14 Water Resource direct testimony.

15 MS. CROCKETT: Thank you.

16 MR. SHEAHAN: I have it.

17 MR. TURNER: Do you have a copy of that,
18 Mr. Sheahan?

19 MR. SHEAHAN: I have that. And I'm
20 sorry, could you tell me where in that document
21 you're referring?

22 MS. CROCKETT: List -- page 3. Dr. Rose
23 states, at the bottom of the page, the last
24 paragraph, that the mass balance model that he's
25 developed suggests that there is not enough intra-

1 basin flow to deliver sufficient groundwater with
2 the -- the necessary isotopic characteristics to
3 deliver the sufficient volume of groundwater at
4 Burney Falls. Are you in agreement with that?

5 MR. SHEAHAN: If I may just read it into
6 the record. The statement begins in reference to
7 a previous quotation from the Dames and Moore
8 report, and it says, In contrast to the statement,
9 the results of the mass balance model developed
10 here suggest that an intra-basin flow model cannot
11 deliver a sufficient volume of groundwater with
12 the necessary isotopic characteristics to account
13 for the minus 13.0 per mil groundwater at Burney
14 Falls.

15 And then the second sentence in that
16 paragraph, The available data implies an
17 additional inter-basin mixing component is
18 required.

19 I've looked at this, and I -- I don't
20 agree exactly. Let me explain.

21 MS. CROCKETT: Absolutely.

22 MR. SHEAHAN: The assumptions that went
23 into the -- the model, the inter-basin or intra-
24 basin modeling that were done here, were based on
25 Dr. Rose's, and I believe Dr. Davis' previous work

1 in the area, in which they developed an equation
2 for the relationship between the oxygen 18
3 deficiency and elevation at which precipitation
4 occurred.

5 That equation was based on sound data.
6 It was an excellent piece of work, but it referred
7 to the area to the west of the Cascade Mountains.
8 The data were based on -- on samples from that
9 area, and -- and I concur that it's representative
10 of that area.

11 The Burney Basin, however, is to the
12 east of the Cascade Mountains. It's in the rain
13 shadow of the Cascades. By the same model, first
14 of all, let -- let me just say this. By applying
15 this model to the Burney Basin, we agree that
16 model does not work in the Burney Basin.
17 Incidentally, it also does not work in the Hat
18 Creek Basin. So there's a flaw in the model.

19 Let me finish my answer, please. We
20 went the next step. We established a similar
21 equation based on Dr. Rose's and Dr. Davis' data,
22 for the rain shadow effect. This is presented in
23 Appendix A to the supplemental Hydrogeologic
24 Studies Report in the -- the Biological Assessment
25 Report.

1 And using that equation, and a more --
2 more rigorous mass balance analysis, we were able
3 to show that using the rain shadow effect not only
4 did the -- the Burney Basin, precipitation in the
5 Burney Basin account for all of the oxygen 18
6 depletion data, but that also worked for the Hat
7 Creek Basin.

8 MS. CROCKETT: As you read in that one
9 paragraph, Dr. Rose stated that there is not
10 enough intra-basin flow, in his model developed,
11 that there was not intra-basin flow to deliver the
12 volume, and that's what you were saying right now,
13 if I am correct.

14 MR. TURNER: Objection. Mr. Bouillon, I
15 think the question about that statement in Mr. --
16 Dr. Rose's memo has been completely answered by
17 Mr. Sheahan. He said he disagreed with that, and
18 he explained the basis for his disagreement with
19 it. I don't --

20 HEARING OFFICER BOUILLON: He did.
21 We're going to give Ms. Crockett a little leeway,
22 and since this is cross examination I'm going to
23 make him say it again. Hopefully, in terms a
24 layman can understand.

25 MR. TURNER: Okay. Thank you.

1 MR. SHEAHAN: Could you repeat the
2 question, please.

3 MS. CROCKETT: Okay. First, you made --
4 I started to ask a question in the midst of your
5 statement, and I apologize. I was trying to
6 clarify which study you felt was not valid. So
7 we'll go back to your original statement that I
8 started to say something, and then you said let me
9 finish. And were you referring to Dr. Rose's
10 study, or an earlier study of yours?

11 MR. SHEAHAN: Neither. I -- I did not
12 say that either study was valid.

13 MS. CROCKETT: Or did not work, excuse
14 me. Did not work. You -- you tell me what you --
15 what you said.

16 MR. SHEAHAN: Well --

17 MR. TURNER: Rather than have Mr.
18 Sheahan do that, Ms. Crockett, perhaps you could
19 rephrase your initial question, and Mr. Sheahan
20 could try again --

21 MS. CROCKETT: Okay.

22 MR. TURNER: -- to give you the answer
23 that I think he gave you, perhaps more concisely,
24 and, as Mr. Bouillon requested, in layman's terms.

25 MS. CROCKETT: Okay. According to your

1 calculations, and using the rain shadow theory, do
2 I understand correctly -- and this would be my
3 question -- that there is enough water between
4 rain precipitation and intra-basin flow to answer
5 the oxygen levels at the Falls?

6 MR. SHEAHAN: Yes. And let me see if I
7 can summarize that.

8 Based on our analysis of the data for
9 the rain shadow effect, we were able to confirm,
10 through a rigorous analysis of mass balance, that
11 there is sufficient precipitation at the
12 appropriate levels of oxygen depletion within the
13 Burney Basin to fully account for all of the
14 oxygen depletion data that we see in the discharge
15 area of Burney Basin.

16 Our conclusion, therefore, is that there
17 is no contribution from Hat Creek to the Burney
18 Basin.

19 MS. CROCKETT: Were you present last
20 night when Dr. Rose testified?

21 MR. SHEAHAN: Yes.

22 MS. CROCKETT: We -- just for
23 clarification, we discussed the same paragraph
24 with Dr. Rose. I asked him to clarify this last
25 night. Were you present when he did that?

1 MR. SHEAHAN: I was present last night
2 during his testimony.

3 MS. CROCKETT: Okay. Basically, Dr.
4 Rose stated that with new data he would have to
5 re-do the calculations, but that basically this
6 summation of the mass balance stands, in his
7 opinion.

8 HEARING OFFICER BOUILLON: Ms. Crockett,
9 are you --

10 MR. TURNER: Is there a question there?

11 HEARING OFFICER BOUILLON: -- are you --
12 you asking whether he disagrees with Dr. Rose? Is
13 that -- is that your question?

14 MS. CROCKETT: Okay. I'll rephrase
15 that. Thank you.

16 My question is, Dr. Rose stated after
17 reevaluation of new data, that his summation of
18 the mass balance stated in his last paragraph
19 still stands. Do you still disagree with that?

20 MR. SHEAHAN: Well, first of all, I
21 don't believe I've testified that I disagree with
22 his statement of what he has an opinion of. He
23 has his opinion. What I've testified to is that
24 we've gone a step further than that. We've used
25 Dr. Rose's data and made a more rigorous analysis.

1 Our more rigorous analysis shows that there is, in
2 our opinion, no contribution from Hat Creek to the
3 Burney Basin.

4 MS. CROCKETT: Just one moment.

5 (Pause.)

6 MS. CROCKETT: I'm sorry. I've only got
7 Dr. Rose's qualifications. Does someone have a
8 copy, quickly, of his testimony that I could refer
9 to?

10 Have you read Dr. Rose's testimony?

11 MR. SHEAHAN: Yes.

12 MS. CROCKETT: Do you agree or disagree
13 with his conclusions?

14 MR. TURNER: Ms. Crockett, you're going
15 to have to be more specific than that. There are
16 a lot of --

17 HEARING OFFICER BOUILLON: I'll sustain
18 that objection. If you're going to refer to one
19 of Dr. Rose's conclusions, you're going to have to
20 tell him where it appears.

21 MS. CROCKETT: At the bottom of the
22 page --

23 HEARING OFFICER BOUILLON: Page?

24 MS. CROCKETT: -- on page 2, Dr. Rose's
25 testimony. The question is asked, is it -- do you

1 want me to read this question, too?

2 MR. SHEAHAN: Well --

3 MR. TURNER: If you could just give the
4 witness a chance to get the document in front of
5 him, please.

6 MS. CROCKETT: Okay.

7 HEARING OFFICER BOUILLON: Let him try
8 and find it first, in the testimony.

9 MS. CROCKETT: Sure. The question is at
10 the bottom of page 2 of Dr. Rose's testimony, his
11 answer is at the top of page 3.

12 MR. SHEAHAN: I'm looking at the -- the
13 FSA. I believe Dr. Rose's testimony begins on
14 page 119 --

15 MS. CROCKETT: It's in the -- it's -- I
16 just have one copy, since mine, in the shuffling
17 of papers, got taken out of the binder. But it is
18 at the back. That is correct.

19 MR. SHEAHAN: So I can count through,
20 the third page of --

21 MS. CROCKETT: The third page of his
22 testimony.

23 MR. SHEAHAN: All right. I have the
24 third page, and --

25 MS. CROCKETT: His answer is -- it says

1 answer, at the top of the page. And then the
2 question should be at the bottom of the preceding
3 page.

4 MR. SHEAHAN: I'm sorry. Are you
5 looking at the first full paragraph at the top of
6 the page?

7 MS. CROCKETT: Okay. My question
8 concerns his answer at the top of the page. The
9 first full paragraph.

10 MR. TURNER: I think there's a
11 disconnection, Ms. Crockett. It may take us a
12 minute to sort this out.

13 MS. CROCKETT: Sure.

14 MR. TURNER: Mr. Sheahan is -- is
15 working with the copy of Dr. Rose's pre-filed
16 testimony that came with the FSA Part 3, and it
17 begins on page 119 and continues for a number of
18 pages. And I think the pagination and the
19 formatting of the document you're working from is
20 different than his. Perhaps if you could
21 identify --

22 MS. CROCKETT: It is a different one,
23 then.

24 MR. TURNER: -- the particular question.

25 PRESIDING MEMBER KEESE: Give us the

1 question.

2 HEARING OFFICER BOUILLON: What's the
3 question?

4 MS. CROCKETT: T: The question is that Dr.
5 Rose still stipulates in his testimony that --

6 HEARING OFFICER BOUILLON: No, no.
7 What's the question in --

8 MS. CROCKETT: Oh, the question. The
9 question, what conclusions do you believe can be
10 reached, based on the available information about
11 the flow of water into and out of the Burney
12 Basin.

13 HEARING OFFICER BOUILLON: All right.
14 For the record, she is quoting from the last
15 question on page 121 of the Part 3 of the FSA.

16 MS. CROCKETT: Exactly. Thank you.

17 MR. TURNER: And do you have that, Mr.
18 Sheahan?

19 HEARING OFFICER BOUILLON: Do you see
20 that, Mr. Sheahan?

21 MR. SHEAHAN: Yes, I do. Thank you.

22 HEARING OFFICER BOUILLON: Now, what --
23 and you're asking about his answer; is that
24 correct?

25 MS. CROCKETT: That's correct.

1 HEARING OFFICER BOUILLON: And is your
2 question do you agree or disagree?

3 MS. CROCKETT: Do you agree or disagree
4 with his answer?

5 MR. SHEAHAN: Well, let me break his
6 answer down to the pieces. His answer first says,
7 I would conclude that flow into the Burney Basin
8 from the Hat Creek Basin is likely in the vicinity
9 of Burney Falls. I disagree with that portion of
10 his statement.

11 His next statement says, the extent to
12 which groundwater flows into the Burney Basin in
13 the vicinity of the proposed project water supply
14 wells is speculative at this time. I would agree
15 with that. Any opinion that there is flow from
16 Hat Creek into the Burney Basin in the vicinity of
17 the project wells would be speculative, in my
18 opinion.

19 The third sentence says, however, it is
20 notable that a well located less than one mile
21 from the proposed water supply wells, paren, well
22 W-32 in the Fox report, close paren, exhibits an
23 oxygen isotope value that may suggest, paren, but
24 does not prove, paren, a component of Hat Creek
25 Basin groundwater.

1 I'm not immediately familiar with that
2 datapoint. He doesn't mention what the value is,
3 so I -- I would have to look at the datapoint to
4 see whether I would agree that it suggests or not.

5 MS. CROCKETT: Thank you. One last
6 question, and this is a big one, and I agree.

7 If you were to agree that there was a
8 component of the Hat Creek -- of the Hat Creek
9 aquifer as a contribution to the Burney Basin, the
10 question is, would that change the calculation of
11 your impacts?

12 MR. SHEAHAN: Let me make sure I
13 understand. You're saying that if we assume that
14 there is a contribution of water from Hat Creek
15 into the basin, the question is would I -- would I
16 need to make a change in my calculations of --

17 MS. CROCKETT: Of potential impacts.

18 MR. SHEAHAN: -- potential impact. Yes,
19 i would. Let me -- and let me explain what that
20 would entail.

21 The calculated impacts that we have made
22 for the -- the Three Mountain Power water use is
23 based on the percent of impact based on the total
24 groundwater flow through the Burney Basin. We've
25 come up with a calculated percentage, and we've

1 concluded that that's not significant.

2 If we were to assume that we have a
3 contribution of Hat Creek water into the Burney
4 Basin, that would give us a greater amount of
5 water which would serve as the denominator in that
6 calculation, and therefore the new calculation
7 would produce a smaller percent impact.

8 And so we realize that, and in our
9 calculations we did not include Hat Creek inflow
10 because we felt that was a more conservative
11 approach. Our approach showed a greater percent
12 impact. So we would have to make a new
13 calculation, and the new calculation would show
14 less impact than the ones that we have already
15 used.

16 MS. CROCKETT: Some questions on that
17 statement. It is agreed by all parties that the
18 water exiting the Burney Basin, whether from Hat
19 Creek or from the Burney Basin, is one amount of
20 water. And you've made the statement there would
21 be greater water. Does that change the outflow of
22 the basin?

23 MR. TURNER: Objection to the form of
24 the question, Your Honor. Ms. Crockett needs to
25 specify who's agreed to what, where, with respect

1 to that first premise that -- his testimony in her
2 question.

3 HEARING OFFICER BOUILLON: I'm going to
4 sustain the objection. You said everybody agrees
5 on one figure existing the Burney Basin over the
6 Falls, and I don't think that's the case. There
7 have been several figures thrown around in various
8 reports that I've seen. It may be that the Staff
9 and your experts and the Applicant's have agreed
10 on a figure, but if that's true you must limit it
11 to that figure.

12 MS. CROCKETT: Thank you.

13 Are you in agreement with Staff and with
14 the Burney Resource Group that 407,000 acre/feet
15 is the initial starting -- 417 -- 417,000
16 acre/feet is the starting number of water? I
17 think that I may be -- I'm doing this from memory,
18 so that number may not be totally accurate. But
19 within that vicinity, is the starting amount of
20 water in the basin?

21 MR. SHEAHAN: Could you --

22 MR. TURNER: In the basin, or flow over
23 Burney Falls, Ms. Crockett?

24 MS. CROCKETT: Not in the flow over
25 Burney Falls. The starting amount of acre/feet

1 that will be used that's available.

2 MR. SHEAHAN: Please help me out. If
3 you could direct me to where in the documents
4 you're referring.

5 MS. CROCKETT: It would be Linda Bond's
6 initial water budget for Burney Basin. Do you
7 have that as an exhibit?

8 MR. SHEAHAN: When you say the initial
9 water budget, is that in the FSA?

10 MS. CROCKETT: It was submitted --

11 MS. HOLMES: We didn't submit the water
12 budget information as an exhibit, although I
13 believe there is a flow number for Burney Falls
14 that's contained in Staff's testimony that is
15 consistent with the number used by Three Mountain.
16 It's the 1920 -- I can't remember the year, 1922
17 or 1927, measurement. Those two numbers are the
18 same.

19 MS. CROCKETT: I could -- maybe I can
20 simplify this question to a conceptual. Let me
21 see if I can guide Mr. Sheahan through this.

22 Mr. Sheahan, are we on agreement on the
23 amount of water that exits the basin through the
24 various seeps and falls, and Burney Falls?

25 MR. SHEAHAN: I believe the answer is

1 no, there is some disagreement, depending on the
2 methods used in developing water budgets.

3 MS. CROCKETT: So that would be the
4 final number. There would be some detail
5 differences in that final -- final number exiting
6 the fall; is that correct?

7 MR. SHEAHAN: I'm sorry. I don't quite
8 understand.

9 MS. CROCKETT: Clarify your feeling on
10 the difference in calculations of water leaving
11 the basin through the various seeps and Burney
12 Falls.

13 MR. SHEAHAN: Again, just to be -- just
14 so I understand. You're referring only to Burney
15 Falls, or to Burney Falls as one of the outflows
16 of the basin?

17 MS. CROCKETT: I am referring to the
18 total water that is leaving the basin through
19 seeps and Burney Falls. Or we could just say over
20 Burney Falls and the seeps right -- let me -- let
21 me specify. Burney Falls and the seeps right
22 around this -- the spring line and at the Falls
23 within the park.

24 MR. TURNER: And your question is, Ms.
25 Crockett?

1 MS. CROCKETT: Are we in agreement on
2 the amount of water that exits in that particular
3 area?

4 MR. SHEAHAN: To the extent that I
5 believe both Staff and the Applicant are using the
6 same recorded data for the flows at Burney Falls
7 as the basis for their calculations, I believe we
8 are in agreement. We -- we have information from
9 published documents that we have used, and that
10 the -- that have been used in the FSA. We agree
11 on those recorded data.

12 But the point that I'd like to make is
13 that that flow varies. It varies with the time of
14 the year, and it varies with the year, and so
15 there's a lot of variation --

16 MS. CROCKETT: Absolutely.

17 MR. SHEAHAN: -- in the flow, so there's
18 no single number --

19 MS. CROCKETT: No one contests that.

20 MR. SHEAHAN: -- that is agreed upon.

21 MS. CROCKETT: Absolutely.

22 MR. TURNER: Would you let Mr. Sheahan
23 finish his answer, please?

24 MS. CROCKETT: Oh, I'm sorry.

25 MR. SHEAHAN: I'm -- thank you, I think

1 I'm through.

2 MS. CROCKETT: Burney Resource Group
3 totally agrees with you.

4 My question leads to your statement that
5 those numbers at the fall, seasonally, would
6 change if there was an increase, if Hat Creek did
7 contribute. I just need clarification that you're
8 saying that if, in fact, the numbers -- if, in
9 fact, Hat Creek aquifer did contribute to the
10 intra-basin flow of Burney Falls, that those
11 numbers would increase. Is that correct? Did I
12 understand you correctly?

13 MR. SHEAHAN: No, you did not.

14 MS. CROCKETT: Okay. Could you clarify
15 it. That's what I thought I heard you say, and
16 that would be the question that I'm ultimately
17 trying to get to.

18 HEARING OFFICER BOUILLON: Ms. Crockett,
19 let me ask a question. I think I know what you're
20 driving at, and I think I --

21 MS. CROCKETT: Okay.

22 HEARING OFFICER BOUILLON: -- know what
23 you thought you heard.

24 Mr. Sheahan, you have a figure for the
25 -- that you've used in your calculations for the

1 outflow of water over Burney Falls and the seeps
2 in the park. Regardless of what that figure is,
3 it would not increase regardless of where the
4 water in the Burney Basin comes from. Is that
5 correct? Burney Creek Basin.

6 MR. SHEAHAN: Yes, that's correct.

7 HEARING OFFICER BOUILLON: That's an
8 absolute figure.

9 MR. SHEAHAN: That's correct.

10 HEARING OFFICER BOUILLON: There is a
11 difference between you and Dr. Rose about where
12 that water comes from, whether it comes all from
13 the Burney Creek Basin or there's some -- some
14 inter-basin flow from Hat Creek. Is that correct?

15 MR. SHEAHAN: That's correct. Yes, sir.

16 HEARING OFFICER BOUILLON: But the
17 outflow still remains the same.

18 MR. SHEAHAN: The measured outflow is --

19 HEARING OFFICER BOUILLON: To be
20 redundant, it remains the same.

21 MR. SHEAHAN: -- the measured outflow.
22 Yes.

23 HEARING OFFICER BOUILLON: But then you
24 said if there is some inter-basin transfer to the
25 Burney Creek Basin, that the actual impact of the

1 Three Mountain wells would be a smaller percentage
2 of the available flow. That's what I thought I
3 heard you say in response to one of her questions.

4 MR. SHEAHAN: That's correct. Yes.

5 HEARING OFFICER BOUILLON: But -- and is
6 that -- that's because of the modeling you did
7 with your rain shadow effect. Is that correct?
8 Are those two tied together?

9 MR. SHEAHAN: No, not -- not quite. If
10 I may explain.

11 HEARING OFFICER BOUILLON: Okay.

12 MR. SHEAHAN: The modeling we did
13 indicated that there is no contribution from Hat
14 Creek. I believe what we're talking about is if I
15 were to assume that there is contribution from Hat
16 Creek, then that would mean that there would have
17 to be additional outflow. I don't know where that
18 outflow would go. There's no record that it would
19 be going out of Burney Falls, but it would have to
20 be going out someplace. And if we assume that
21 there was additional outflow going out somewhere,
22 then we would have to take that into account in
23 calculating the impact of the Three Mountain Power
24 project, which would reduce the total impact.

25 HEARING OFFICER BOUILLON: So you're

1 assuming that any contribution from Hat Creek,
2 then, is additional to what now goes over Burney
3 Falls.

4 MR. SHEAHAN: Yes.

5 MS. CROCKETT: Thank you. That was my
6 question. And I --

7 (Laughter.)

8 MS. CROCKETT: -- after much work, thank
9 you for the clarification.

10 I think that concludes my questions of
11 their panel.

12 HEARING OFFICER BOUILLON: Ms. Holmes --
13 any redirect?

14 MR. TURNER: No redirect, Your Honor.

15 HEARING OFFICER BOUILLON: Ms. Holmes,
16 do you have any --

17 MS. HOLMES: No.

18 HEARING OFFICER BOUILLON: Do you care
19 to move these into evidence?

20 MR. TURNER: I would move the direct and
21 -- direct testimony of Mr. Sheahan, Mr. Hamer, and
22 Mr. McFadden, as well as the rebuttal testimony of
23 Mr. Sheahan, into evidence as the next exhibit,
24 the number of which I've lost track of, I'm sorry
25 to say.

1 HEARING OFFICER BOUILLON: Before I rule
2 on that, I do have one question --

3 MR. TURNER: Oh, I -- pardon me. I was
4 just pointed -- Mr. Zischke reminded me that the
5 rebuttal is already in evidence. It went in with
6 all our rebuttal evidence yesterday, as Exhibit
7 69. So I'm only at this time moving the --

8 MR. ZISCHKE: You're moving all of it.
9 It's just been marked as --

10 MR. TURNER: Okay, it's been marked as
11 69, so I'd move existing Exhibit 69, plus the
12 direct testimony that we heard about this morning,
13 together with the attached exhibits, as the next
14 exhibit number.

15 HEARING OFFICER BOUILLON: Those
16 portions of these witnesses' testimony, wherever
17 they may be located in those exhibits, they will
18 be received.

19 (Thereupon Exhibit Number 69 was
20 received into evidence.)

21 HEARING OFFICER BOUILLON: But I have a
22 question for Mr. Sheahan. In responding to a
23 question from Ms. Crockett, from Exhibit 9 to your
24 -- your direct testimony, Dr. Rose's letter. The
25 part that you agreed with -- excuse me, I'm on the

1 wrong place again. I'm sorry.

2 On page 121 of the FSA, Part 3, at the
3 bottom. The sentence that you said you agreed
4 with, the extent to which groundwater flows into
5 the Burney Basin in the vicinity of the proposed
6 project water supply wells, with respect to -- you
7 said you agreed with that portion of Dr. Rose's
8 opinion.

9 In doing that, what -- would you define
10 the word vicinity in that sentence?

11 MR. SHEAHAN: My understanding of this
12 answer is referring to flow from Hat Creek Basin
13 into the Burney Basin, far enough south to where
14 it would be adjacent to the proposed locations of
15 the project wells. And so the vicinity that I'm
16 -- that I interpret this to mean is between Hat
17 Creek Basin and the project wells, that portion of
18 it.

19 HEARING OFFICER BOUILLON: All right.
20 The testimony of these three witnesses will be
21 admitted.

22 Can they be excused? Any reason not to
23 excuse them?

24 MS. CROCKETT: I have one other question
25 formulating. I'm not sure if I want to ask it.

1 Would this be the --

2 HEARING OFFICER BOUILLON: You've
3 already --

4 MS. CROCKETT: I've given -- been -- I
5 have no objection --

6 HEARING OFFICER BOUILLON: Unless it has
7 to do with the word, vicinity.

8 MS. CROCKETT: The word, vicinity.
9 Thank you. Keep me on track.

10 HEARING OFFICER BOUILLON: Ms. Holmes?

11 MS. HOLMES: Excuse me?

12 HEARING OFFICER BOUILLON: May these
13 witnesses be excused?

14 MS. HOLMES: Yes.

15 MS. CROCKETT: Oh -- okay.

16 HEARING OFFICER BOUILLON: They are
17 excused.

18 Turning to the next -- I believe that
19 concludes the witnesses on Water Resources, except
20 that the Staff would like to put Ms. Bond back on
21 the stand for redirect, giving Conditions of
22 Certification.

23 MS. HOLMES: Yeah, the scope of the
24 questions will be directed --

25 HEARING OFFICER BOUILLON: Is that

1 correct?

2 MS. HOLMES: -- to -- the scope of the
3 questions will be limited to the discussion that
4 Mr. McFadden had this morning about their
5 conceptual approach to mitigation.

6 I -- my understanding was that Burney
7 Resources Group also wanted to put a witness on
8 for the same reason.

9 MS. CROCKETT: Absolutely. Just -- just
10 for the scope of that particular conceptual
11 discussion by Mr. McFadden.

12 MS. HOLMES: If we could have a ten or a
13 fifteen minute break to go over that, since we
14 haven't had a chance to confer since the testimony
15 was given, it would be helpful.

16 PRESIDING MEMBER KEESE: Let me ask, how
17 long do you think the testimonies will be?

18 MS. HOLMES: Ten minutes.

19 PRESIDING MEMBER KEESE: Ma'am?

20 MS. CROCKETT: Three to five.

21 PRESIDING MEMBER KEESE: Okay. I'm just
22 trying to work out here our break. So I think --
23 and you'd like ten, is it?

24 MS. HOLMES: Yes.

25 PRESIDING MEMBER KEESE: All right.

1 We'll take ten, and then we'll try to conclude
2 both of these, and that'll be our lunch break, and
3 then we'll move into Biological.

4 MS. CROCKETT: Thank you.

5 HEARING OFFICER BOUILLON: We're in
6 recess. We'll talk -- okay. Ten minutes.

7 (Thereupon a recess was taken.)

8 MS. HOLMES: Staff would like to recall
9 Ms. Bond.

10 HEARING OFFICER BOUILLON: Ms. Bond,
11 you're still under oath.

12 TESTIMONY OF

13 LINDA BOND

14 called as a witness on behalf of Commission Staff,
15 having previously been duly sworn, was examined
16 and testified further as follows:

17 REDIRECT EXAMINATION

18 BY MS. HOLMES:

19 Q Ms. Bond, were you present in the room
20 earlier this morning when Three Mountain Power
21 presented its conceptual proposal in response to
22 Staff's Errata?

23 A Yes, I was.

24 Q Could you very briefly describe exactly
25 what the impact is that both Staff and Three

1 Mountain are attempting to mitigate, and how it
2 comes about?

3 A You mean the impact to wells?

4 Q Yes.

5 A Oh, yes. The power plant's pumping, its
6 groundwater pumping, it will cause water levels to
7 decline in the vicinity of the well. The -- it's
8 called draw-down, and the draw-down radiates out
9 from the well. It's greatest at the well itself,
10 and becomes less at a distance.

11 This decline in water levels will have
12 two impacts that we're concerned about.
13 Potentially, the decline in water levels could
14 draw water levels in nearby existing wells below
15 the intake mechanism for the well. And as a
16 result, well owners, existing well owners, could
17 lose their water supply and their pump mechanisms
18 could be damaged. The pumps are designed to pump
19 water, not air. If they pump air, they're
20 damaged.

21 Those are the impacts that we're
22 concerned about.

23 Q And what's the specific concern about
24 the timing of the specific capacity tests and
25 aquifer tests that are being addressed by the

1 mitigation that's still under discussion?

2 A There isn't an issue regarding the
3 specific capacity tests. They're a general test
4 that is usually performed to help the well
5 operator determine what size pump they should put
6 in the well, and other parameters.

7 However, the aquifer test is performed
8 in order to determine the behavior and conditions
9 of the aquifer system itself, aquifer system in
10 the vicinity of the well. Part of running a --
11 performing a good aquifer test, it's important to
12 contain all the water that's being pumped during
13 that aquifer test and preventing it from leaking
14 back into the aquifer system. This aquifer in
15 particular transmits -- has the capability of
16 transmitting water very rapidly, so it's -- it's a
17 very big concern in this particular location.

18 So what -- what -- the reason why this
19 is the important aspect to mention is that there's
20 a question as to whether or not there will be
21 storage available for the water that's produced
22 during the aquifer test prior to project start-up.
23 There's a possibility that Burney Water District
24 will be building a large storage tank, and if that
25 tank is built before the project is ready for

1 operation, then the aquifer tests can be run, the
2 water can be stored in that tank, and all of the
3 testing, evaluation of the test, and mitigation
4 can potentially be performed before the project is
5 ready to -- to start. That'll be great. Then we
6 don't have complications, those complications.

7 However, if there's no place to store
8 the aquifer test water, then probably the only
9 place to put that water would be to put it into
10 the power plant and use it for cooling. Once that
11 test is -- if that test is not performed until the
12 project is ready to start, then the problem is
13 what do you do in between the time you test --
14 test the aquifer, make your determinations, do the
15 mitigations necessary, and then allow the project
16 to start using that water for -- operating the
17 wells to produce water for cooling. What happens
18 between that period.

19 Staff has proposed that during that --
20 just during that period, the project would need to
21 operate on dry -- with dry cooling. The Applicant
22 has proposed an alternative which we described in
23 our conditions, in italics, that the Applicant has
24 proposed that instead, the project be allowed to
25 go ahead and operate with wet and dry cooling, and

1 that they would have this temporary mitigation of
2 -- of providing nearby well owners with water so
3 that they wouldn't need their pumps, and wouldn't
4 need their wells during that interim period.

5 So the water storage is the problem.
6 The question of water storage.

7 Q And when Three Mountain presented its
8 proposal this morning, did you find that it
9 contains deficient information to evaluate as to
10 whether or not it would be effective in preventing
11 the impacts that Staff is concerned about?

12 A No.

13 Q And, in fact, was there sufficient
14 information in the proposal to conclude that it's
15 likely that the parties will be able to reach
16 agreement about the mitigation post-hearing?

17 A We don't yet have enough information, so
18 no.

19 Q Finally, why don't you just go through a
20 very brief summary of the issues and the impacts
21 that you're concerned about that you believe are
22 not addressed by the proposal that you heard this
23 morning.

24 A I have a question. Would that include
25 issues that there is confusion around, or issues

1 that are simply not addressed?

2 Q Both.

3 A Okay. My first concern is the
4 Applicant's proposal that the --

5 PRESIDING MEMBER KEESE: Excuse me. I'd
6 like to ask a couple questions before we get
7 started on this. Let me see if I understood your
8 testimony.

9 There is the proposal to build a water
10 tank. Evidently there isn't a water tank now.
11 There's a proposal to build one.

12 Did you give us the likelihood of that
13 happening?

14 THE WITNESS: No, I did not.

15 PRESIDING MEMBER KEESE: Just there's a
16 proposal out there, it's not filed or anything.
17 It's just there.

18 THE WITNESS: This is a -- a water tank
19 -- the wells themselves, the project wells are
20 going to be operated by Burney Water District.
21 Burney Water District has a proposal --

22 PRESIDING MEMBER KEESE: They don't have
23 a water tank now, and they're proposing to have a
24 water tank.

25 THE WITNESS: Burney Water District.

1 Yes. And I have no information on the likelihood
2 of when it will be built.

3 PRESIDING MEMBER KEESE: Okay. Now,
4 then the other -- and that would take care of all
5 the problems.

6 THE WITNESS: Yes.

7 PRESIDING MEMBER KEESE: The other
8 alternative is the tank isn't there when the
9 plant's ready to operate. Did I hear you say that
10 the mitigation would take place before the plant
11 was operating?

12 THE WITNESS: The proposal is to have
13 wells mitigated for --

14 PRESIDING MEMBER KEESE: Potential --

15 THE WITNESS: -- potential loss of water
16 supply.

17 PRESIDING MEMBER KEESE: Before the
18 plant starts.

19 THE WITNESS: Before the plant starts.

20 PRESIDING MEMBER KEESE: Then -- and
21 then why would the plant start with dry cooling?

22 THE WITNESS: Because if the aquifer
23 test has to be delayed until the plant is ready to
24 operate, there's going to be a significant time
25 gap between performing the aquifer tests and

1 making those mitigations.

2 PRESIDING MEMBER KEESE: So the
3 mitigations are not going to take place before the
4 plant operates.

5 THE WITNESS: If there's no storage
6 available for the aquifer -- if there's no storage
7 available for water produced --

8 PRESIDING MEMBER KEESE: Okay. I
9 thought I heard --

10 THE WITNESS: -- produced for --

11 PRESIDING MEMBER KEESE: -- I thought I
12 heard the mitigation was going -- that if the --
13 even if you had to wait, that you were going to do
14 the mitigation before the plant operated. And
15 that's not correct?

16 THE WITNESS: Before the plant operated
17 with pump -- in -- in the wet cooling mode. The
18 plant can operate on dry cooling mode, but not in
19 -- with the wet -- with the groundwater. It can't
20 use groundwater.

21 PRESIDING MEMBER KEESE: Well, one
22 specific question. Is there -- if the tank isn't
23 there --

24 THE WITNESS: If the tank isn't there --

25 PRESIDING MEMBER KEESE: -- is there

1 going to be mitigation before the plant operates?

2 Mitigation of anticipated impacts.

3 THE WITNESS: No, there won't be
4 mitigation before the plant operates with the
5 COC's -- excuse me, with the Staff's recommended
6 conditions.

7 PRESIDING MEMBER KEESE: Okay. Thank
8 you.

9 HEARING OFFICER BOUILLON: Ms. Bond, if
10 -- you can resume your testimony, if you remember
11 the question.

12 THE WITNESS: Sure. I do. I was asked
13 what concerns I have with the proposals that the
14 Applicant has made.

15 One of the Applicant's proposals would
16 be to have the well interference analysis, a
17 description of that analysis submitted at the same
18 time they submit their aquifer test work plan,
19 have those two things submitted to the CPM for
20 review and approval.

21 The problem that I see with that plan is
22 that although some aspects of a well interference
23 analysis could be designed and described prior to
24 the aquifer test, there are other aspects that
25 need to be determined after the aquifer test

1 occurs. If you had required approval of the well
2 interference test -- well interference analysis
3 before you've got the aquifer test information,
4 then the -- then there is a possibility that the
5 analysis, well interference analysis plan would
6 not be sufficient or appropriate for evaluating
7 the impacts.

8 And so if you do this -- this premature
9 approval of the well interference analysis, then
10 there may be significant impacts that would occur.
11 Like if you -- if you make a plan to go to New
12 York next year, and you've still got some, you
13 know, you don't know when all your hearings are,
14 you may have to renege on that trip. You may not
15 be able to make that trip. You won't have all the
16 information.

17 PRESIDING MEMBER KEESE: Excuse me
18 again. Was the Applicant suggesting that they
19 would do the mitigation beforehand?

20 THE WITNESS: The Applicant --

21 PRESIDING MEMBER KEESE: Is that the --

22 THE WITNESS: No.

23 PRESIDING MEMBER KEESE: -- that the --

24 THE WITNESS: No. The Applicant was --
25 was suggesting that we lay out the well

1 interference analysis before the aquifer test is
2 done, and --

3 PRESIDING MEMBER KEESE: And do the
4 mitigation before they started operating?

5 THE WITNESS: No.

6 PRESIDING MEMBER KEESE: They were not
7 suggesting that they would do the mitigation
8 before operation.

9 THE WITNESS: They were proposing a
10 temporary mitigation, but not the final
11 mitigation.

12 PRESIDING MEMBER KEESE: Okay.

13 THE WITNESS: Do you have more questions
14 about that sequencing?

15 HEARING OFFICER BOUILLON: I have a
16 question about -- but actually, I think I have to
17 direct that towards Ms. Holmes.

18 The problems that your witness will
19 testify to, if she continues, are they in the
20 nature of evidence, or are they more in the nature
21 of, really, argument or discussions that might be
22 best covered with briefs?

23 MS. HOLMES: I believe that they are in
24 the nature of evidence, as she's going to discuss
25 the technical reasons why there are problems with

1 what the Applicant has proposed so far. That was
2 the point of her discussion about the well
3 interference portion of their proposal, was to
4 provide technical testimony, or technical
5 information about why it's not sufficient to
6 prevent impacts. And I'd like to be able to
7 continue with -- with that.

8 PRESIDING MEMBER KEESE: Okay. I'll try
9 to restrain myself.

10 THE WITNESS: I -- I want to answer any
11 questions that you have.

12 I am concerned about the role of the
13 independent engineer that the Applicant is
14 proposing. They've proposed that an independent
15 engineer will determine whether nearby wells will
16 be incapable of providing water during the life of
17 the project. That is the purpose of the aquifer
18 test analysis, and that is the role of the project
19 owner to -- to perform this analysis and
20 demonstrate the wells that would be impacted, and
21 the role of the Energy Commission to evaluate that
22 well interference analysis and -- and determine
23 whether it's been done correctly or not.

24 So I'm very concerned that if that role
25 is somehow assigned to an independent engineer,

1 then -- that impacts could occur. We -- we've
2 agreed on a -- on a methodology for determining
3 those impacts, and it should -- it should be
4 assigned -- it appears to me that it's being
5 assigned, at least in part, to some unnamed
6 independent engineer. I'm also concerned about
7 the lack of information on how this independent
8 engineer is selected; who selects -- selects the
9 person, and all those questions surrounding that.

10 I'm concerned about the temporary
11 mitigation that the Applicant has proposed.
12 There's simply not enough detail yet available on
13 who would be mitigated because, remember, at that
14 point you don't know who will be impacted. The --
15 the project owner is proposing that they run the
16 aquifer test and then immediately start using wet
17 cooling if they need to. And we don't know what
18 those impacts are going to be until we see what
19 the results of the well interference analysis is.
20 Who would be mitigated, who would be qualified for
21 this temporary mitigation, how quickly would water
22 be provided to someone whose well would go dry.

23 For -- for homeowners, I realize that
24 providing water is much simpler than providing it
25 to commercial operations or agricultural

1 operations. There isn't enough information on how
2 quickly that would occur, how quickly water could
3 be provided to commercial and agricultural
4 operations, and who would decide how much water,
5 et cetera, et cetera.

6 I believe that summarizes the questions
7 I have at this point. There's just a -- a lack of
8 information available to ensure that adverse --
9 significant adverse impacts would not occur to
10 nearby well owners. There may be a loss of their
11 water supply, damage to their well equipment, and
12 all the corresponding problems involved in losing
13 your water supply.

14 HEARING OFFICER BOUILLON: Ms. Bond, let
15 me ask you how long it takes to run the physical
16 aquifer test, physically do the test.

17 THE WITNESS: The aquifer test would
18 take 40 hours, and -- except for the -- we've
19 specified that it's okay to run the aquifer test
20 and use that water, that 40 hours' worth of water
21 for wet cooling.

22 HEARING OFFICER BOUILLON: I understand
23 that.

24 THE WITNESS: It's the period afterwards
25 that --

1 HEARING OFFICER BOUILLON: So we're
2 talking two days --

3 THE WITNESS: -- we're worried about.

4 HEARING OFFICER BOUILLON: -- it would
5 be done.

6 THE WITNESS: Right.

7 HEARING OFFICER BOUILLON: How long
8 would it then take you to analyze the results of
9 that aquifer test?

10 THE WITNESS: Let me check our notes.
11 We -- we worked out the timeline on this. I
12 believe the Applicant's proposal may add some time
13 to it, but I guess that's the other piece, I --
14 I'm not sure what their timeline will be.

15 It's going to be -- the Applicant will
16 have two months to perform the well interference
17 analysis following the aquifer test. So two
18 months to perform the analysis following the test,
19 and then the CPM will have one month to review
20 that well interference report.

21 PRESIDING MEMBER KEESE: And then
22 mitigation would start?

23 THE WITNESS: Then a compensation
24 package would be submitted by the Applicant. They
25 have a month to put together a compensation

1 package. So that's four months. And then
2 noticing the well owners would come after that, in
3 order to get access, you know, to -- to obtain
4 permission to get access to the wells that would
5 be impacted, and determine whether those could be
6 lowered or whether the well would have to be
7 deepened, or whether the well would have to be
8 replaced.

9 HEARING OFFICER BOUILLON: That's after
10 the four month process?

11 THE WITNESS: Yes. I -- I can go -- I
12 can actually provide the full timeline, if you'd
13 like.

14 HEARING OFFICER BOUILLON: Yes, I would.

15 THE WITNESS: Okay. Do you want me to
16 read it out to you?

17 HEARING OFFICER BOUILLON: Yes, please.

18 THE WITNESS: Okay. I'm going to just
19 start with the aquifer test. Okay. Prior to the
20 aquifer test they have to submit the plan, but
21 we'll just let that go.

22 Okay. The aquifer test would be
23 performed at, let's just say time zero. A report
24 of the aquifer test itself would be one month
25 later. The CPM would review that within two

1 weeks, so report on aquifer test is one month.
2 Review of the aquifer test and approval would be
3 one and a half months. Well interference report
4 would be submitted after two months. CPM would
5 review well interference report and determine if
6 it's complete after three months. Compensation
7 packages would be submitted after four months.

8 Should I slow down? Okay, I'm somewhat
9 repeating myself.

10 The CPM would have two weeks to review
11 -- excuse me. Okay. The CPM would review the
12 compensation package in two weeks, so that we're
13 up to four and a half months. The Applicant has
14 one month to notice all of the well owners and
15 that -- of the approval of the compensation
16 package, so they have one month to contact
17 everyone. And then what we were proposing was
18 there would be -- I believe this says one month.
19 I'd have to check that out. One -- I think it's
20 two months. Okay, there's two months, then, for
21 the mitigation to actually occur, because you have
22 to have someone come out and do the work. So, I'm
23 sorry, that's up to seven months.

24 PRESIDING MEMBER KEESE: Is there going
25 to be any baseline testing before the --

1 THE WITNESS: What kind of baseline
2 testing?

3 PRESIDING MEMBER KEESE: -- the
4 operation of the -- of the wells? Are you going
5 to test them? I had thought I heard previously
6 that -- that the wells in the vicinity that might
7 be impacted would be tested for a baseline before
8 the draw-down started.

9 THE WITNESS: We have not proposed that,
10 and I don't think the Applicant has, either.

11 PRESIDING MEMBER KEESE: Thank you.

12 THE WITNESS: Now, as I said before, I
13 believe that the Applicant's proposal didn't talk
14 about how this timing would be different. I
15 believe their timing would be longer, a longer
16 period than ours. But until I see it written,
17 that's one of the details that we still need to
18 find out about.

19 So there is a significant period of time
20 between the aquifer test and when the mitigation
21 could occur.

22 HEARING OFFICER BOUILLON: And you're
23 proposing that they only be allowed to use dry
24 cooling for those seven or eight months, the way I
25 added that up. Is that correct?

1 THE WITNESS: That's correct.

2 HEARING OFFICER BOUILLON: And sketchy
3 as it is, what the Applicant is proposing, as I
4 understand it, is to provide -- to in another
5 manner provide water for the affected --
6 potentially affected landowners during that seven
7 month period.

8 PRESIDING MEMBER KEESE: The actually
9 impacted -- if they're actually impacted.

10 HEARING OFFICER BOUILLON: The actually
11 impacted, or the potentially impacted?

12 THE WITNESS: Yes, the -- Mr. Keese is
13 correct that the Applicant is proposing to provide
14 water only to well owners who would have problems
15 with their well going dry. So only impacted well
16 owners.

17 HEARING OFFICER BOUILLON: Impacted, or
18 actually going dry?

19 THE WITNESS: Actually going dry is what
20 I mean by impacted. Yes.

21 HEARING OFFICER BOUILLON: I mean --

22 THE WITNESS: Actually going dry.

23 HEARING OFFICER BOUILLON: -- you're not
24 talking about the level dropping.

25 THE WITNESS: Someone would call --

1 HEARING OFFICER BOUILLON: You're
2 talking about --

3 THE WITNESS: -- them and say my well
4 went dry. Quick, do something.

5 PRESIDING MEMBER KEESE: And at that
6 point, then you would have a choice of either
7 sending in another water supply or re-drilling the
8 well, or whatever the --

9 THE WITNESS: No, it wouldn't be the
10 Applicant's choice as to how the well would be
11 repaired. They wanted to -- they have proposed
12 that that would be determined by an independent
13 engineer. What would be appropriate --
14 appropriate mitigation would be.

15 HEARING OFFICER BOUILLON: Okay.

16 THE WITNESS: But that's just a detail.
17 I don't think that's what you were concerned
18 about.

19 HEARING OFFICER BOUILLON: Ms. Holmes,
20 do you have more?

21 MS. HOLMES: No.

22 HEARING OFFICER BOUILLON: Mr. Turner,
23 do you have cross?

24 MR. TURNER: No, I don't have cross for
25 Ms. Bond.

1 MS. CROCKETT: Just --

2 HEARING OFFICER BOUILLON: Ms. Crockett?

3 MS. CROCKETT: Yes, just one quick
4 question for Ms. Bond that came up during all
5 this.

6 RECROSS EXAMINATION

7 BY MS. CROCKETT:

8 Q We've all assumed that we've been
9 discussing the plant could do a wet cooling
10 operation in order to do the aquifer test.

11 My question is, Ms. Bond, is the plant
12 capable of handling the 40 hours of pumping for
13 the aquifer test?

14 A If the plant is operational, then the 40
15 hours of water could be used for wet cooling.

16 Q There is enough capacity in the cooling
17 towers and usage that the 40 hours would not
18 overload the plant?

19 A I -- that's what I understand from the
20 information the Applicant has given me.

21 MS. CROCKETT: Okay. That was our -- it
22 just dawned on me when you were talking that we
23 hadn't really explored that. That is my one
24 question. Thank you.

25 HEARING OFFICER BOUILLON: Thank you.

1 THE WITNESS: Okay.

2 HEARING OFFICER BOUILLON: Thank you.

3 Ms. Crockett, I believe you have one
4 additional witness. Would that just take a couple
5 of minutes?

6 MS. CROCKETT: Absolutely. Yes. Mr.
7 Hathaway. He has not been sworn.

8 (Thereupon Abe Hathaway was, by the
9 reporter, sworn to tell the truth, the
10 whole truth, and nothing but the truth.)

11 TESTIMONY OF

12 ABE HATHAWAY

13 called as a witness on behalf of the Intervenor,
14 having first been duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. CROCKETT:

18 Q Mr. Hathaway, you have been present at
19 all of the telephone conferences -- most of the
20 telephone conferences and most -- in all of the
21 meetings that we've had in trying to work on the
22 water quality -- water resources qualifications,
23 Conditions of Certification; is that correct?

24 A For the Soil and Water Errata.

25 Q For Soil and Water.

1 A Yes, I have.

2 Q You have some concerns, as well, and if
3 you would briefly go over those.

4 A My specific concern is that when you
5 have a conceptual agreement that everyone is
6 working on, unfortunately the concepts can be
7 batted around and everybody is comfortable with
8 the concepts, but I need dates and times and
9 timelines.

10 I also have a concern about the timing
11 of the test in regards to completion of the
12 aquifer, specific aquifer test in relationship to
13 the operation of the plant. The timeline for
14 mitigation, and how the mitigation can be extended
15 out to seven months. For a production well seven
16 months is a -- is an entire irrigation season in
17 our location.

18 So if there is interference or -- a
19 residential well, it either provides water or it's
20 dry. And a production well, it can cost you a lot
21 of money, additional money to produce the same
22 amount of water. So my concern is -- is how that
23 impact will be mitigated in a timely enough
24 fashion that -- that there's not a loss.

25 I also have a question on -- on the

1 independent contractor that's going to test. Is
2 that agreed upon by the well owner and the
3 Applicant? And I understand that the -- the CPM,
4 the Compliance Project Manager, is going to be the
5 one that reviews the -- all the data that's
6 submitted by the Applicant. I believe that the
7 affected parties should also have purview to all
8 that information, also.

9 Q So in the conceptual stage, there's a
10 lot of concern because of these omissions or more
11 details to be worked out.

12 A Lack of understanding of -- of those
13 details, yes.

14 Q Would you clarify to Mr. Keese and Mr.
15 Bouillon. They're not aware of your pumping needs
16 and what happens when that pumping is not
17 available and how much water you're using during
18 this irrigation time. That needs to be clarified.

19 A We have a production well that -- that's
20 driven by a 90 horsepower diesel engine. It has
21 the capabilities of producing 1800 gallons a
22 minute depending upon the -- the contract seed
23 crops that we produce. Last year we had 70 acres
24 of garlic that required 24 hour a day pumping from
25 May 10th through September 17th. This year we're

1 looking at additional seed -- carrot seed and
2 sugar beet seed, and possibly some cantaloupe
3 seed.

4 So, unfortunately, if the water drops
5 below our bowls -- it's not just a little bit of
6 water that we need. And the Applicant has -- the
7 Applicant has addressed it conceptually, but --
8 but I'm not sure that -- that that amount of water
9 could be delivered.

10 HEARING OFFICER BOUILLON: I'm sorry,
11 Mr. Hathaway. Did you say 100 gallons per minute?

12 THE WITNESS: Eighteen hundred gallons a
13 minute.

14 BY MS. CROCKETT:

15 Q One other clarification. Are you the
16 only rancher within this vicinity of the plant
17 that has the same needs?

18 A No.

19 Q Also, we had discussed earlier this
20 morning that we might have one suggestion to help
21 this area along.

22 A I believe the issue of water is -- is
23 significant enough to the Burney Resource Group
24 and myself that we would be willing to extend the
25 process and leave the evidentiary record open, and

1 -- and meet you in Sacramento at any time
2 appropriate for the Committee and -- and Staff and
3 the Applicant, so that we could finish it in this
4 part of the record.

5 My -- our concern is that you see the --
6 the extent of the legal advice that Burney
7 Resource Group has sitting in front of you, and
8 there's three of us. When briefs are filed and
9 shipped around rapidly, and for us to comment, we
10 comment in lay terms. And -- and I'm afraid that
11 our comments -- it's not that they would be put
12 aside, but they wouldn't be clearly understood as
13 -- as the Applicant has the opportunity and Staff
14 has the opportunity to have counsel with them as
15 they draw up their concerns.

16 So if we go to briefs and -- and
17 meetings to try to solve it, I'm sure there'd be a
18 solution, but we can clearly hold the process up
19 because we'd have to be making sure that what
20 we're saying is -- is what we really want to say.

21 Q Just for clarification, we are
22 discussing only this one issue, just specifically
23 this one issue --

24 A This Errata. That's right.

25 Q -- for an extra day to be in the

1 evidentiary process.

2 A That's correct.

3 MS. CROCKETT: Thank you. Is there
4 anymore that you -- he is available for cross.

5 PRESIDING MEMBER KEESE: One quick
6 question, since he raised the issue.

7 How many commercial or agricultural, or
8 what -- large water users do you think are in the
9 impact zone?

10 THE WITNESS: Two.

11 PRESIDING MEMBER KEESE: Two. And how
12 many residential?

13 THE WITNESS: From the proposed location
14 and the radius north, I have no idea.

15 PRESIDING MEMBER KEESE: Large or --
16 it's not a large number.

17 THE WITNESS: Burney's not a large area.

18 PRESIDING MEMBER KEESE: Right. Okay,
19 thank you.

20 HEARING OFFICER BOUILLON: Mr. Hathaway,
21 the other agricultural operation, how large is it?

22 THE WITNESS: The other --

23 HEARING OFFICER BOUILLON: In comparison
24 to yours.

25 THE WITNESS: Their water needs are

1 similar, or even greater. They grow wild rice.

2 HEARING OFFICER BOUILLON: I'm not sure
3 you're the right person for me to ask this of, Mr.
4 Hathaway, but the Burney Resource Group, with
5 regard to Soil and Water Condition Number 11 and
6 the Errata, has requested a draw-down trigger of
7 two feet rather than five feet. Are you --

8 THE WITNESS: I'm -- I'm purview to
9 that, and --

10 HEARING OFFICER BOUILLON: -- competent
11 to discuss that?

12 THE WITNESS: -- let me tell you our
13 reasoning behind that. When you're not a
14 hydrologist and you're not lawyers, then you're
15 dependent upon people who service and install
16 wells. And the University of California at Davis
17 provides us with -- with guidelines, so that when
18 people -- when we pay \$10,000 to have a well
19 installed, we want to make sure that -- that the
20 person that's installing it does it correctly.

21 And what most of those documents
22 represent is that above and beyond the
23 recommendation of -- of the manufacturer of the
24 pump, say it's a Hayes or a Berkeley, or whatever,
25 is that there is a two to three foot additional

1 head of water placed above that pump for safety.
2 Just -- just to allow the bowls to operate
3 submerged.

4 And so when they talk about a five foot
5 draw-down, we realize that that five foot draw-
6 down and a two or three foot draw-down, there's a
7 significant difference. But -- but if you remove
8 that safety head from the manufacturer's already
9 suggested, then we -- our concern is that, you
10 know, the top bowl may become dry and spin air,
11 and we've lost the whole shed. In the worst case.
12 And -- and I think the mitigation has to be
13 written worst case.

14 HEARING OFFICER BOUILLON: Mr. Turner,
15 do you have any cross examination?

16 MR. TURNER: I have just one question.

17 CROSS EXAMINATION

18 BY MR. TURNER:

19 Q Mr. Hathaway, these documents to which
20 you just referred in your last answer, could you
21 be more specific as to precisely what you're
22 referring to? I mean, you mentioned UC Davis, but
23 can you give me some additional context to that,
24 please?

25 A The University of California at Davis

1 provides, it's referred to as an Irrigation
2 Handbook. If -- if you look at Berkeley Pumps and
3 -- and all those small residential submersible
4 pumps, in their installation guidelines they will
5 tell you the -- the amount of water that should
6 safely be -- how deep it should be, and how
7 efficient it'll operate, and they give you a list
8 of parameters. And it's just general information
9 that -- that you glean and read.

10 Q And the Irrigation Handbook, that is the
11 name of the document that you're referring to, the
12 UC Davis document? Is that the -- to the best of
13 your knowledge, the title of that document?

14 A It -- yes. It's got authors, and it's
15 got -- it's a standard university document.

16 MR. TURNER: That's all I have.

17 HEARING OFFICER BOUILLON: Ms. Holmes.

18 MS. HOLMES: I have one question.

19 CROSS EXAMINATION

20 BY MS. HOLMES:

21 Q Mr. Hathaway, if the aquifer tests can't
22 be conducted until the plant is operational, due
23 to the lack of storage, would the dry cooling for
24 the time between the completion of the aquifer
25 test and the implementation of what we're calling

1 the permanent mitigation, as Staff has proposed,
2 would that address your concerns?

3 A That would alleviate the -- the use of
4 the aquifer, yes.

5 MS. HOLMES: Thank you.

6 MR. TURNER: I have one follow-up in Ms.
7 Holmes' question, if I might.

8 RECROSS EXAMINATION

9 BY MR. TURNER:

10 Q Mr. Hathaway, apropos the question that
11 Ms. Holmes just asked you. Likewise, if Three
12 Mountain Power were able to provide a commercial
13 well owner such as yourself with an alternative
14 water supply during this period, after operation
15 and before completion of the aquifer test, if you
16 needed water, would that also adequately address
17 your needs, assuming that it got there promptly?
18 That alternative water supply got there promptly.

19 A At the pressure and -- and gallonage
20 that I require?

21 Q Yes.

22 A Yes.

23 MR. TURNER: That's all I have.

24 HEARING OFFICER BOUILLON: Thank you.

25 MS. HOLMES: Can I ask one more question

1 with respect to that question?

2 HEARING OFFICER BOUILLON: I'm going to
3 give Ms. Crockett a chance in between here. She's
4 -- we've skipped her a couple of times.

5 Do you have any redirect?

6 REDIRECT EXAMINATION

7 BY MS. CROCKETT:

8 Q I just have one, and that question would
9 be that there would have to be time parameters for
10 his --

11 HEARING OFFICER BOUILLON: No, no, no.

12 Do you have a question for the witness?

13 BY MS. CROCKETT:

14 Q Would you have other parameters besides
15 pressure and volume?

16 A It was my understanding it was immediate
17 delivery, from the -- from the question. So -- so
18 the time parameter is -- would be immediate,
19 especially if it's July or August.

20 MS. CROCKETT: Okay. Thank you.

21 HEARING OFFICER BOUILLON: Ms. Holmes.

22 MS. HOLMES: Thank you.

23 RECROSS EXAMINATION

24 BY MS. HOLMES:

25 Q Has Three Mountain Power presented

1 enough information to you in their proposal that
2 you believe that your -- that they have ensured
3 that your concerns will be addressed?

4 A No.

5 MS. HOLMES: Thank you.

6 HEARING OFFICER BOUILLON: I believe
7 that -- well, let me --

8 (Inaudible asides.)

9 HEARING OFFICER BOUILLON: Thank you,
10 Mr. Hathaway. The witness is excused.

11 We could break for lunch now, but I --
12 the Committee has decided that there's a Mr. Angel
13 Winn in the audience, representing the Pit River
14 Indians. And in the nature of Public Comment,
15 we're going to allow him to make a statement at
16 this time. And I'm going to ask him to do it from
17 the witness stand where the microphones are
18 available, both for recording and amplification.

19 So, Mr. Winn, if you'd come up here.
20 And then we will break for lunch. However, I
21 would like to announce at this time that after we
22 -- when we resume after lunch, that we're going to
23 ask Mr. McFadden to retake the stand, and we'd
24 like to ask him some questions about the ability
25 to perform dry cooling for the seven or eight

1 month period we've been talking about, and
2 questions related to what we've been discussing
3 for the last hour or so.

4 MR. TURNER: You have read Mr.
5 McFadden's mind.

6 HEARING OFFICER BOUILLON: So you might
7 like to discuss that with your Counsel, Mr.
8 McFadden.

9 Mr. Winn, if you'd identify yourself,
10 and your affiliation.

11 MR. WINN: Yes.

12 HEARING OFFICER BOUILLON: You don't
13 need to be sworn in as a witness.

14 MR. WINN: My name's Angel Winn. I'm
15 Vice Chairman for the Pit River Tribe.

16 And in the past, it's been many months
17 ago that we've talked with Danielle as far as
18 Cultural Resources. But the issue today -- oh, is
19 it okay if I stand?

20 HEARING OFFICER BOUILLON: We prefer
21 that you sit, because the recording can pick up
22 better.

23 MR. WINN: Oh, I'm sorry. Okay.

24 Anyway, in regards to this Three
25 Mountain Power Project, I've received this

1 information on the Final Staff Assessment, Phase
2 3, or however it's titled here. And I just want
3 to read a part of that.

4 It says, the Three Mountain Power
5 Project electric generating plant and related
6 facilities, such as electric transmission line,
7 natural gas pipeline, and waterlines, are under
8 the Energy Commission's jurisdiction and cannot be
9 constructed or operated without the Energy
10 Commission's certification.

11 And what I'd like to read to you is --
12 is the first page off of our Tribal Constitution,
13 which was signed by the Secretary of the Interior.
14 And if you'll just give me a few minutes to read
15 this to you. Just, I have been directed by my
16 Tribal Council, which is the governing body of our
17 -- of our tribe, which is -- it's a little
18 different than other tribes, whereas our council
19 directs our chairman to enter into agreements, and
20 as far as to that effect, I just want to state
21 that.

22 So, the Pit River Tribe, a tribe of 11
23 autonomous bands of Indians that adopted a formal
24 written constitution on August 16th, 1964, for the
25 purpose of securing our rights and powers inherent

1 in our sovereign status, as reinforced by the laws
2 of the United States developing and protecting Pit
3 River, Ajumawi, Atsugenwi, and ancestral lands and
4 all other resources; preserving peace and order in
5 our community; promoting the general welfare of
6 our people and our descendants; protecting the
7 rights of the tribe and of our members; and
8 preserving our land, race, culture, and identity,
9 does hereby establish this revised constitution.

10 Article 1, Name. This is stating who we
11 are. The name of this entity is the Pit River
12 Tribe, Ajumawi-Atsugenwi Nation, comprised of 11
13 autonomous bands. And they are the Ajumawi,
14 Atsugenwi, Atwamsini, Ilmawai, Atstarawai,
15 Hammawi, Hewisedawi, Itsatawi, Aporige,
16 Kosalektawi, and Mades, that since time memorial
17 have resided in the area known as the One Hundred
18 Mile Square, located in parts of Shasta, Siskiyou,
19 Modoc, and Lassen Counties in the State of
20 California, as referred to in Pit River Docket
21 Number 347, parentheses, 7 ICC 815 at 844 Indians
22 Claims Commission.

23 And further, Article 2, Territory and
24 Jurisdiction. Section 1, Territory. The
25 territory of the tribe consists of all ancestral

1 lands recognized by the Indian Claims Commission
2 in its July 29th, 1959, Seven Indians Claims
3 Commission, 815, 853 -- 863, excuse me, Appendices
4 A and B, pages 1 through 49.

5 Findings of Fact and Opinion in Docket
6 347, i.e., the One Hundred Mile Square described
7 in Docket Number 347, and specifically including,
8 but not limited to -- and I want to express that
9 again, but not limited to, the XL Ranch,
10 Montgomery Creek, Roaring Creek, Big Bend, Burney,
11 Lookout, and Likely Rancherias. The 13 acres
12 deeded to the United States by the State of
13 California in trust for the Pit River Home and
14 Agricultural Cooperative Association, as trustee
15 for the tribe. Modoc County Assessor's Parcels,
16 and it has the numbers here, 013-172-07 and 013-
17 191-01, and any other property that hereafter may
18 be acquired by or for the tribe.

19 Section 2 is Jurisdiction. And this is
20 why I'm here. The jurisdiction of the tribe under
21 this constitution shall extend throughout its
22 territory. Nothing in this article shall be
23 construed to limit the ability of the Pit River
24 Tribe, Ajumawi-Atsugenwi Nation, to exercise its
25 jurisdiction to the fullest extent permitted by

1 federal law, including, but not limited to, lands,
2 waters, properties, air space, fish and wildlife,
3 and other resources.

4 And this is signed by the Secretary of
5 the Interior. So by law, the state or any federal
6 agencies, they're supposed to have a government to
7 government relationship with our people. And as
8 far as -- the only people that have come and
9 addressed us from Three Mountain Power has been
10 Danielle, and that is -- is related to Cultural
11 Resource issues.

12 But it is -- I have been directed by my
13 Council to come here to speak that, on behalf of
14 our tribe, that we're asking that the -- the
15 California Energy Commission and Three Mountain
16 Power, that we be a part of that process of this
17 relicensing, and not to be here as just as -- as
18 the public, which is -- you know, we're a
19 governing agency, and we would -- we're asking for
20 that.

21 So that's what I'd like to say right
22 now, you know.

23 HEARING OFFICER BOUILLON: Thank you,
24 Mr. Winn. I'd appreciate it if you could give the
25 Committee a copy of that, the first couple

1 articles of that constitution.

2 MR. WINN: Sure, no problem. I can --
3 yeah, I can do that.

4 Just -- just to comment further, you
5 know, about some of the comments that I've heard
6 about the -- the uncertainty of water and the
7 aquifer, you know, because a lot of the -- the way
8 the water travels under the ground up there,
9 because of the volcanic tunnels and such, is that
10 I don't know if a lot of you are aware that the
11 Burney water -- Burney Creek disappears into the
12 ground, and then it comes out of the ground again
13 up above Burney Falls. And so when you start
14 drilling or doing things, you know, to the -- to
15 the water, to the -- in that area, that, you
16 know, if you bust something loose, that it might
17 not be there again.

18 Also, that in the area of just some
19 natural things, as far as rising river, you know,
20 just that whole area is real unique, and I heard
21 some comments about Hat 1 and 2, whether that is
22 affecting the Burney aquifer or not, and such, you
23 know, and this one gentleman said that's all
24 speculation. You know, I'm not here to litigate
25 that or argue that. But I just wanted to make

1 that comment. And if I'm off base, I apologize.
2 And I wanted to be here yesterday, but I was in
3 Fresno, had to go to a funeral.

4 So I'm asking that the CEC be able to
5 contact the tribe and to involve us in part of
6 this licensing, to hear more of our views about
7 the resources besides just Cultural Resources.
8 And this -- this project is on a cultural site.

9 Thank you.

10 PRESIDING MEMBER KEESE: Thank you.

11 HEARING OFFICER BOUILLON: Thank you.

12 PRESIDING MEMBER KEESE: Okay. We'll
13 take lunch. We'll be back here -- you want to try
14 1:30? Does that -- that's 55 minutes, is that --
15 okay, 1:30.

16 (Thereupon the luncheon recess was
17 taken.)

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1 AFTERNOON SESSION

2 PRESIDING MEMBER KEESE: Mr. Bouillon.

3 HEARING OFFICER BOUILLON: Mr. McFadden,
4 would you resume the witness stand, please.

5 TESTIMONY OF

6 MARTIN McFADDEN

7 called as a witness on behalf of the Applicant,
8 having previously been duly sworn, was examined
9 and testified as follows:

10 HEARING OFFICER BOUILLON: Mr. McFadden,
11 the testimony this morning indicated that with
12 regard to the Soil and Water Conditions in Exhibit
13 80, that there were what the Committee feels are
14 significant differences between your conditions --
15 your idea of what the condition should be, or the
16 parameters for them, and what the Staff has
17 proposed.

18 And with regard to the aquifer test and
19 its ramifications, Ms. Bond indicated that there
20 could be as much as a seven or eight month delay
21 between the time of the aquifer test and the time
22 mitigation was accomplished, and that during that
23 time, under the Staff's proposal, except for the
24 water from the aquifer test itself, the Applicant
25 would be required to use only a dry cooling

1 method. Are you familiar with that testimony?

2 MR. McFADDEN: Yes, I am.

3 HEARING OFFICER BOUILLON: First of all,
4 taking into account that the aquifer test might be
5 run first in the winter, or second, in the summer,
6 would it be possible under the design of the
7 system to run the plant on dry cooling only for,
8 say, seven months?

9 MR. McFADDEN: No, Mr. Bouillon, it's
10 not possible to run the plant on a dry cooling
11 only, if you're characterizing that as the use of
12 no water at all.

13 Our mitigation plan proposed a wet and
14 dry hybrid cooling system, and at all times, and
15 it's clearly shown in the mitigation plan, there
16 is a requirement for use of water, at least some
17 water, and the minimum amount of water use is for
18 processed cooling, meaning turbine lube oil and
19 air inlet cooling, and then perhaps a few other
20 minor uses. So there's always a requirement that
21 at least some water be used for the plant to
22 operate.

23 HEARING OFFICER BOUILLON: And what is
24 that amount of water?

25 MR. McFADDEN: I believe the minimum

1 amount is on the order of 200 gallons a minute in
2 the winter time, but it would be somewhat higher
3 in -- in the summer time, but I can't be sure.

4 HEARING OFFICER BOUILLON: But in the
5 magnitude of multiples of the 200, can you make a
6 -- hazard a guess?

7 MR. McFADDEN: Two, two and a half
8 times, I would guess. And qualifying it that it's
9 a guess.

10 HEARING OFFICER BOUILLON: Is it
11 substantially more costly for the Applicant or the
12 plant operator to run the plant on the dry cooling
13 portion of your system than it is the wet cooling?

14 MR. McFADDEN: The cost is not in -- in
15 a direct cost. It is a cost that is in -- in lost
16 revenue, and it's a severe -- it's a severe
17 impact. There's two impacts that are related to
18 -- to the dry cooling that we foresee, that would
19 probably preclude the -- preclude going forward
20 with the project. As we had stated many times
21 previously, we could not move this project forward
22 on -- on dry cooling alone, and if you'll allow me
23 to explain.

24 The business arrangement that we
25 anticipate for this project, which is very common

1 for almost all the projects that are going forward
2 in California, is for there to be a project
3 financing. And the use of dry cooling in our
4 application, restricting our cooling use, I should
5 say, to that minimum amount, would cause an
6 uncertainty in cash flow that's necessary to repay
7 the financing.

8 As you attempt to receive financing from
9 a financial institution, they will look at your
10 business projections and they will evaluate the
11 certainty of those business projections and
12 determine if you are an acceptable lending risk.
13 The possibility that a huge amount of that revenue
14 would not be available because of the inability to
15 meet a condition of certification would cast such
16 uncertainty on the project because it happened --
17 would be happening early in the project, that it
18 would probably render the project financially
19 infeasible.

20 HEARING OFFICER BOUILLON: With regard
21 to the timeline that Ms. Bond testified to, does
22 the Applicant agree that, in general terms, that
23 the seven or eight month process she spoke of
24 would be required if -- if the Staff's
25 recommendations were adopted?

1 MR. McFADDEN: Let me answer that with
2 yes and no, and then, if I may, a little bit of a
3 lengthy explanation.

4 We have talked, and I think the Staff
5 and the Applicant have a similar sequence of
6 events that's necessary to accomplish the
7 mitigation. And the mitigation that's outlined in
8 the sequence of capacity test, aquifer test, well
9 interference analysis and calculation, proposal of
10 mitigation, and effecting of mitigation, is in the
11 normal time, in the normal Conditions of
12 Certification, it'll take up to seven months
13 because all of the time limits in the Conditions
14 of Certification are up to, this'll happen within
15 this many days, and so on. You add them up and
16 it's about seven months, I think.

17 And we would expect in the timeline that
18 we envision as the most highly probably timeline
19 for the project that, yep, it'll take about that
20 long. And the most highly probably timeline that
21 we envision for the project is that all of the
22 testing and all the mitigation will be done before
23 -- before the commissioning.

24 And what we're doing in this -- in this
25 mitigation that's being done in advance is we are

1 mitigating the long term projected impacts due to
2 well -- well draw-down. These impacts are
3 calculated based on the 30 year operation of the
4 life of the project. They're not an estimate of
5 the immediate impact that would happen by starting
6 to pump, and pumping for a short period of time.
7 They're calculated based on the aquifer
8 characteristics applied with the plant in
9 operation and drawing its maximum water, and
10 contrasting that to the same aquifer
11 characteristics and no pumping taking place due to
12 the plant. And that calculation is done over the
13 30 year life of the plant.

14 And we think that's an appropriate
15 mitigation. But it presents us, in the way the
16 structure is now, with a risk factor that is --
17 that is basically unacceptable, and the way we
18 have tried to deal with that risk factor that is
19 unacceptable is to say that in the unlikely event
20 that there is a -- that the test cannot be
21 completed on the timeline, there is still an
22 opportunity for us to move forward, complete the
23 project, and operate, and mitigate the very
24 unlikely immediate impact, which also, by the way,
25 would be identified if the aquifer test were able

1 to be -- to be performed.

2 So the timeline that we envision for
3 this project is that, as -- as you know, and it's
4 in evidence, at least in the administrative
5 record, we have entered into a water service
6 agreement with the Burney Water District, and as
7 part of that water service agreement we have
8 committed to provide them with certain capital
9 improvements that will allow the water service to
10 be provided to Burney Water District.

11 Also, it's known that the Burney Water
12 District is in the process of completing a system
13 upgrade to their -- to their system, what's called
14 the EDA project. And part of that project is an
15 increase in storage. The Burney Water District
16 has asked us, and we have agreed that we will
17 consider, and we'll make the decision here very
18 shortly, instead of putting in the two million
19 gallon tank that's required for the -- the EDA
20 proposal, we'll put in a four million gallon tank.
21 And that decision will be made prior to the board
22 meeting in January for the Burney Water District,
23 and I expect at this time that we would go forward
24 and authorize that.

25 In that case, the four million gallon

1 tank, which is partially the crux of this issue,
2 would be installed by about August of next year,
3 2001. But then in order to do the tests, the
4 other capital improvements that we've committed to
5 in the Burney Water District agreement, the new
6 wells, the interconnecting piping to close off the
7 loop to make the system complete, would have to be
8 completed. And we anticipate that those would
9 take on the order of a year, but certainly no more
10 than about 15 months. So they would be available
11 in August of 2002, which would give us nine to
12 eleven months to complete the test, which should
13 be plenty of time.

14 But one of the problems is that there's
15 an uncertainty in the aquifer test, because the
16 specific capacity test provides the parameters for
17 locating, the observation -- no, they're not
18 observationals, excuse me -- the monitoring wells
19 for the aquifer test. So in the sequence we do
20 the specific capacity tests, and we can do those
21 very early. From what Ms. Bond said about them
22 being done to determine the right size for the
23 final pump, that -- that all tracks, and that all
24 tracks with what Mr. Suppa has told me about the
25 ability -- you know, as soon as the hole's in the

1 ground, we can find out what this thing will do
2 kind of a discussion.

3 So we'll know some information from the
4 specific capacity test, and we have to translate
5 that into locating monitoring wells for the
6 aquifer test. And there's a condition in the
7 Conditions of Certification, as they stand now,
8 that says that you'll drill the monitoring wells
9 and you'll use them in the aquifer test, and the
10 test is unacceptable if there's no measurable
11 draw-down.

12 Now, if there's no measurable draw-down
13 in the -- in the observation wells -- or, excuse
14 me, the monitoring wells, that in itself is an
15 indication, not a conclusive indication, but a --
16 an indication nonetheless, that there's not going
17 to be a problem. But it doesn't define the
18 characteristics of the aquifer that are necessary
19 to complete the next steps of the five stage
20 schema that we and the Staff have been talking
21 about.

22 And so that means that the test needs to
23 be redone. The monitoring wells need to be
24 replaced, perhaps, relocated. It -- it puts
25 delays and uncertainty into the completion of that

1 particular Condition of Certification. And the
2 delays in that Condition of Certification then put
3 uncertainty into the completion of the project on
4 its schedule, and then that, of course, puts the
5 uncertainty into the cash flow, which kills the
6 project. So we have the chain of events.
7 Unfortunately, we have dominoes lined up here, and
8 we're going to knock one of them off with these --
9 with this aquifer test if we can't perform it.

10 Now, I have been -- I'm questioning the
11 experts, and I'm not portraying myself to be a
12 water expert, that 40 hours, which is about the
13 capacity of the four million gallon tank, is
14 probably enough. But in order to reach an
15 equilibrium to determine whether or not you're
16 going to see a draw-down in the monitoring well,
17 the test needs to run from one to five days, is
18 what I've been told. And so the capacity of the
19 monitor -- of the -- of the wells runs out after
20 44.4 hours. Or the -- not the monitoring well,
21 excuse me. The tank runs out after 44.4 hours.

22 That -- that level of uncertainty says
23 it's distinctly possible, says to me, and it'll
24 certainly say it to a banker, that it is
25 distinctly possible that you won't be able to

1 successfully complete an aquifer test in the --
2 during the construction time of the plant. So
3 what are you going to do?

4 And our proposal to mitigate this is
5 that recognizing that not getting draw-down in the
6 monitoring wells represents an indication that
7 there's -- there's less of a problem, and
8 recognizing that we are trying to mitigate a long-
9 term impact measured over the probable 30 year
10 life of the plant, that we should be allowed to do
11 the test during the commissioning phase, and if
12 there is a very unlikely immediate impact to any
13 well owner, then mitigate that specific impact by
14 providing them with replacement water.

15 Now, if that circumstance happens, the
16 timeline isn't seven months. The timeline is as
17 fast as it can get done. And that only depends
18 upon exactly what work needs to be done, and the
19 cooperation of the landowner. In the worst case,
20 it's the requirement for -- for drilling, piping,
21 and powering in a new -- a new well.

22 HEARING OFFICER BOUILLON: Speaking of
23 this replacement water, if you're talking about
24 1800 gallons a minute, 24 hours a day, such as the
25 needs of Mr. Hathaway, or Hathaway Ranch, outside

1 of a new well, do you -- is there any capacity in
2 the Burney Basin to provide that kind of water?

3 MR. McFADDEN: Well, there may be. And
4 -- and I think that we would have the potential
5 ability to get the water from the Burney Water
6 District because their waste treatment facility
7 has a -- a water connection, at it -- you know, a
8 freshwater connection, at its location, which is
9 also immediately adjacent to our power plant. And
10 in addition, the Three Mountain -- excuse me, the
11 Burney Mountain power well could be used to
12 provide that -- that water, potentially, some of
13 that water.

14 I -- at this point I don't know of any
15 other immediate sources, or immediate ways to do
16 it, but I would say that when we get to this point
17 of notification from Mr. Hathaway that there's a
18 problem, we will have already been alerted to the
19 fact that we have not been able to successfully
20 complete an aquifer test, and we would be making
21 whatever preparations are necessary to respond to
22 immediate -- immediate coverage of his needs, and
23 we can do that working with Mr. Hathaway.

24 PRESIDING MEMBER KEESE: Let me ask,
25 what -- what is the maximum capacity of your

1 wells?

2 MR. McFADDEN: My wells, being the
3 Burney Mountain Power wells --

4 PRESIDING MEMBER KEESE: Right.

5 MR. McFADDEN: -- or the project wells?

6 PRESIDING MEMBER KEESE: Burney --

7 MR. McFADDEN: I think the Burney
8 Mountain power well's rated at 750 gallons a
9 minute.

10 PRESIDING MEMBER KEESE: So that
11 wouldn't supply all of Mr. Hathaway's needs.

12 MR. McFADDEN: No, it would not be able
13 to supply all of it.

14 PRESIDING MEMBER KEESE: But it's also
15 unlikely that you would take his whole supply,
16 since you're not -- you're taking about a third of
17 it.

18 MR. McFADDEN: I -- see, that's what I
19 think, Mr. Keese, that it's -- it's unlikely that
20 we would cause this significant immediate impact.
21 The calculations that we're doing to determine
22 whether there's an impact or not are -- are based
23 on the 30 year life of the -- of the project, and
24 are not likely to show up -- to show up
25 immediately. So there is -- there does represent

1 some time. But we did want to reflect the
2 possibility that even though it's very remote,
3 there could be an immediate -- immediate impact of
4 the water being lowered below the -- the intake
5 mechanism, as Ms. Bond said.

6 PRESIDING MEMBER KEESE: How -- do you
7 have an idea on how many wells we're dealing with
8 that are in the impact area? The reasonable
9 impact area.

10 MR. McFADDEN: If the impact area is
11 drawn as a circle of two mile radius, my
12 recollection is that I've seen pictures that have
13 about 35 wells.

14 PRESIDING MEMBER KEESE: We were --
15 since we were only privy to these things yesterday
16 also, we were attempting to discern, is the scheme
17 that's been put together in the -- in your
18 interpretation of the Staff's proposal here, are
19 you obligated to mitigate any well that has a
20 problem over 30 years? Or are you only obligated
21 to do an analysis once and mitigate those that
22 indicate they might have a problem?

23 MR. McFADDEN: We are -- we are
24 proposing to mitigate those wells that show a
25 calculated projected impact. And the calculation

1 is done based on the aquifer parameters and agreed
2 upon approved methodology.

3 MS. PRAUL: I just need to clarify. If
4 we put aside for the moment the financing
5 uncertainty, is it technically feasible to
6 implement the Staff's proposal for dry cooling for
7 a seven month period, not to exceed.

8 MR. McFADDEN: No, if dry cooling means
9 no water use. The plant is a hybrid cooled plant.

10 MS. PRAUL: Okay. But if -- if you used
11 your minimum and your -- and dry cooled for seven
12 months.

13 MR. McFADDEN:: Then it's technically
14 feasible to operate the plant at some reduced
15 power level, presumably then depriving the
16 customers of California the opportunity to buy it,
17 and -- and causing severe financial impact, as I
18 described earlier, to the project.

19 MS. PRAUL: So, as I understand that
20 financial impact, that is one of uncertainty. And
21 I am not persuaded that -- that if it's known by
22 all the parties and the bank that this is a
23 specific seven month period for a particular
24 reason, that that's uncertainty. It's just
25 something that you know you need to explain to

1 them, and cover with subsequent revenues.

2 MR. McFADDEN: And I think that's the --
3 there's two issues related to that. The first is
4 the coverage of them with -- with later issues, or
5 later revenues. There's two impacts at -- at
6 work, and one is the timing of the revenues. The
7 misplaced revenues, the lost revenues, would occur
8 early in the operation of the plant, and those
9 early revenues for the operation of the plant are
10 most critical for the successful project from an
11 equity perspective of the power plant. And that,
12 in particular, is our perspective, as well.

13 But with respect to the -- to the
14 lenders, they will either require a reserve
15 against that amount of money, or they will lower
16 the amount of money that they are willing to lend.
17 And this is the same thing that you would find in
18 a -- in trying to obtain a household mortgage. If
19 you have a known period of seven months where you
20 don't have a job, they'll take that into account
21 in determining your -- the amount you can get for
22 a loan and what the repayment terms are.

23 And that is potentially such a length of
24 time, and -- especially if it happens in the
25 summertime, it would have such severe consequences

1 that the amount of loan available would not allow
2 us to build the project, or the amount of reserve
3 would make the equity investment infeasible.

4 MS. PRAUL: So a 30 year revenue stream
5 is going to be jeopardized by an incrementally
6 reduced first seven months.

7 MR. McFADDEN: Yes, ma'am, because it's
8 not a small increment, especially if that
9 increment happens in the summertime.

10 MS. PRAUL: So -- so what is the -- the
11 efficiency penalty -- I assume that's that you're
12 speaking about, with respect to using the dry
13 versus the wet/dry? Is that --

14 MR. McFADDEN: No, ma'am. It's not an
15 efficiency penalty. And I haven't calculated it
16 exactly. It's an output penalty. And the output
17 penalty is caused by the raising of the
18 backpressure on the steam turbine, and the
19 inability to condense the steam at -- at low
20 temperature. I cannot tell you for this project
21 exactly what it will be, because it involves more
22 detailed engineering than I have had the privilege
23 of studying. But I can tell you the effect that
24 it has on a dry cooled plant that we operate in
25 Chinese Camp. And my estimation is that the dry

1 cooler that we have selected for this project is
2 even less effective than the one that we have
3 installed at Chinese Station.

4 In the mitigation plan we propose what
5 we called 100 percent/100 percent dry and wet
6 cooling. But if you recall, there's a key -- key
7 phrase in there, you got to look at the
8 temperatures. It's 100 percent dry cooling at 48
9 degrees, and it's 100 percent wet cooling at 98
10 degrees. And the dry cooler that's designed for
11 48 degrees will drop in its ability to condense
12 steam rapidly as the temperatures increase above
13 48 degrees.

14 Now, I can take that back to our Chinese
15 Station facility. It is designed to condense the
16 equivalent of 22 megawatts of steam at 80 degrees.
17 But in its location, and it does have some other
18 interference parameters like there's a hillside
19 nearby, and the wind affects it, and the towers
20 get dirty. But in the summertime, when the
21 temperature exceeds 100 degrees, the plant's
22 output can be as low as only 11 megawatts.

23 So in this plant, I believe that we
24 would have to not only reduce the power generated
25 by steam, but we would also probably have to back

1 off the gas turbines to reduce the power -- to
2 reduce the amount of steam being produced. I
3 don't know that for a fact, but I suspect, from my
4 experience, that it's true.

5 So the amount of output could easily be
6 on the order of 75 megawatts, which is a
7 substantial proportion of the revenue of a power
8 plant. And -- and I, once again, I'm not -- did
9 not make those calculations, other than as thumb
10 rule calculations from my own experience.

11 HEARING OFFICER BOUILLON: Mr. McFadden,
12 in response to Chairman Keese's question about the
13 -- I believe it was about the existing wells, you
14 said they were 750 gallons a minute. Is that
15 correct?

16 MR. McFADDEN: The -- the well that I
17 was talking about when I said that was -- was the
18 Burney Mountain power well, yes. I believe that's
19 its maximum capacity.

20 HEARING OFFICER BOUILLON: But the wells
21 that you're proposing to drill, or that the Burney
22 Water District is proposing to drill for you, what
23 would be the capacity of those wells?

24 MR. McFADDEN: I believe the maximum
25 capacity of each is 1500 gallons.

1 HEARING OFFICER BOUILLON: So you would
2 have 3,000 gallon maximum available for those two
3 wells?

4 MR. McFADDEN: Yes.

5 (Pause.)

6 MR. McFADDEN: Mr. Bouillon --

7 HEARING OFFICER BOUILLON: Yes.

8 MR. McFADDEN: -- may I make a comment
9 about your introductory remarks, that there seemed
10 to be a chasm between Staff and Applicant?

11 HEARING OFFICER BOUILLON: I don't think
12 I used the word chasm.

13 MR. McFADDEN: I -- I recognize that
14 wasn't your exact --

15 HEARING OFFICER BOUILLON: And I think
16 I'm going to leave that up to your Counsel, if
17 you'd like to -- I'm going to offer him the chance
18 for redirect --

19 MR. McFADDEN: Thank you.

20 HEARING OFFICER BOUILLON: -- in a
21 moment.

22 Ms. Crockett, does our -- do our
23 questions suggest any additional cross examination
24 to you?

25 MS. CROCKETT: Only comments that --

1 HEARING OFFICER BOUILLON: That --

2 MS. CROCKETT: -- the Burney Resource
3 Group would like to make.

4 HEARING OFFICER BOUILLON: You'll have a
5 chance for comments. That's what the briefs are
6 for.

7 MS. CROCKETT: Well, actually, I could
8 frame them in the way of questions.

9 HEARING OFFICER BOUILLON: No.

10 Ms. Holmes, do you have any questions?

11 MS. HOLMES: Just one.

12 RECROSS EXAMINATION

13 BY MS. HOLMES:

14 Q If the well that currently supplies
15 Burney Mountain Power is used to supply water as
16 mitigation to some affected well owners, does that
17 mean that Burney Mountain Power Project must shut
18 down?

19 A It depends upon how much it takes, but I
20 would say no. We would -- we would think that we
21 would be able to continue to share the water.
22 Using the excess of Burney Mountain Power's needs
23 over -- using the excess pumping capacity over
24 Burney Mountain Power's needs is to provide to the
25 mitigation, remembering that I think that we have

1 some potential other mitigation available from the
2 Burney Water District.

3 Q How does the project operate without
4 water? I'm not following you.

5 A It -- I didn't say it did. I said it
6 continues to operate with water, but the amount of
7 water available for mitigation from Burney
8 Mountain Power would then be reduced by the amount
9 of water that Burney Mountain Power is using.

10 MS. HOLMES: Thank you.

11 PRESIDING MEMBER KEESE: I have one
12 additional question.

13 What -- what we're talking about,
14 although there's disagreement, there's two
15 numbers. One is that there would be two feet of
16 impact over the 30 years, and one is that there'd
17 be five feet of impact over the 30 years.

18 On -- you're offering essentially a
19 hybrid, which is that you will do the analysis and
20 mitigate to the analysis, but that during the
21 seven months, or what -- should it be necessary,
22 you would offer absolute mitigation and
23 substitution. You're -- you're going to
24 substitute for anybody's water that they don't
25 get, and you're going to mitigate any impact that

1 takes place.

2 MR. McFADDEN: We're proposing that as a
3 safety net. Yes.

4 PRESIDING MEMBER KEESE: What would be
5 the timeframe for mitigation, and -- and what
6 would be -- what would be the standard? Are --
7 are you saying that if a well goes down two feet,
8 three feet, four feet -- I mean, do we have a --
9 do we have a standard like that to decide whether
10 you're going to mitigate, and then how -- are you
11 -- I would imagine we're assuming that the first
12 five feet probably doesn't do any damage. Are you
13 saying that as it gets down to two you'll start,
14 and you will mitigate before it gets to five,
15 or --

16 MR. McFADDEN: No. Let me -- let me see
17 if I can -- can explain the mitigation --

18 PRESIDING MEMBER KEESE: If you get the
19 idea of what I'm asking.

20 MR. McFADDEN: -- program. Because the
21 -- the water -- the water level, I don't -- do not
22 believe, and I have had discussions with my water
23 experts on this, goes down as an immediate impact
24 two feet or five feet, that is a possibility, but
25 we believe it to be relatively remote. What we do

1 -- what we do know that we're doing is we're
2 calculating a 30 year draw-down over the life of
3 the project, and we are mitigating based on that
4 calculated draw-down.

5 Now, the question that I asked my water
6 experts was, if we do the long term impact study
7 and we provide the mitigation that that long term
8 impact study shows and the Conditions of
9 Certification require, and the Energy Commission
10 agrees with, have we solved any potential short
11 term problems, and the answer was yes. So if we
12 conduct the aquifer test and get everything done
13 before commissioning, as we anticipate is the most
14 likely scenario, there is no long term problem,
15 there is no short term problem.

16 But if you get to the issue of well,
17 suppose we haven't finished this test and we start
18 using water, what happens if there is an immediate
19 impact. And that immediate impact would be
20 somebody's well goes dry, as Ms. Bond said, that
21 the water has dropped below the intake equipment
22 of their -- of their project. And if that's the
23 case, then that's the standard for the immediate
24 safety net mitigation that we propose.

25 PRESIDING MEMBER KEESE: Well, not being

1 a water expert, are they -- are they going to know
2 it before it happens? I mean, are you going to
3 do --

4 MR. McFADDEN: Not being a water expert
5 -- not being a water expert, I would -- I would
6 say that we're -- we're trying to provide a
7 mitigation against an unforeseen catastrophic but
8 highly unlikely scenario. That's what we're
9 trying to prevent with this safety net, trying to
10 provide.

11 As I said before, we will have
12 attempted, certainly, to run a successful aquifer
13 test. And the inability to run the aquifer test
14 because of the inability to see draw-down in a
15 monitoring well will give some -- a higher degree
16 of certainty that the immediate impact is not
17 likely to happen, as well.

18 PRESIDING MEMBER KEESE: Okay. So are
19 we talking about you'll -- your -- are you
20 proposing, under your concept, that you would
21 substitute water within 24 hours, or are you --

22 MR. McFADDEN: I -- I think we can do
23 that, and I think the word we use, immediately, is
24 we'll get it within 24 hours. Yes. And that --
25 that certainly is not an issue to be able to do

1 that with the -- with the residential owners, and
2 if we see that there's a problem with the aquifer
3 test we can make longer term preparations with
4 respect to the -- to the agricultural also, we
5 discussed.

6 PRESIDING MEMBER KEESE: Thank you.

7 Ms. Holmes, you have some questions?

8 MS. HOLMES: Thank you. May I ask the
9 questions?

10 PRESIDING MEMBER KEESE: Yes, you may.

11 FURTHER RECROSS EXAMINATION

12 BY MS. HOLMES:

13 Q You said that you would, under your
14 proposal, you would mitigate any affected well
15 owner during the time between the completion of
16 the aquifer test and the implementation of the --
17 I guess we're calling it the long term or the
18 permanent mitigation. Did I understand you
19 correctly?

20 A Yes, I think that's what I said.

21 Q How will you identify who those people
22 are? Is it anybody anywhere who says that they've
23 lost water in their well?

24 A I -- I think that -- I think that we
25 would have to restrict it, certainly, to -- to the

1 Burney Basin, and I don't have a proposal on the
2 -- on the table right now. I mean, we'd have to
3 -- we'd have to narrow it down. I think that the
4 calculations that -- that can be done by the water
5 experts will show that the area is small. It's in
6 the order of -- of a couple of miles, no matter
7 what.

8 Q Do you --

9 A No matter what. But I can't do that
10 right now.

11 Q Do you believe that you'll know that
12 information before you complete the well
13 interference report?

14 A I believe that we have done a great deal
15 of analysis based on the water and the aquifer
16 analysis -- aquifer characteristics that are
17 available now on isotropic and anisotropic
18 analyses so that we'll be able to certainly --
19 certainly, in discussions, be able to put a bound
20 on it.

21 Q Additional discussion will --

22 A I think we have to put additional
23 discussion on it, because I'm not a -- a technical
24 expert to be able to make that statement.

25 Q I'm trying to understand. Is it

1 additional discussion, or is it completion of the
2 well interference report --

3 A Oh, I think it's --

4 Q -- that will put a bound on it?

5 A -- additional discussion that will be
6 able to determine where the very likely impact
7 would -- would be limited to.

8 MS. HOLMES: Thank you.

9 MS. PRAUL: Just one more. Does the
10 record contain information that would allow us to
11 assess the likelihood that you will show no draw-
12 down in the monitoring wells, how many of these
13 aquifer tests have been done and how many have had
14 to be repeated? I mean, not in this basin, but
15 other places.

16 MR. McFADDEN: That's -- that's the
17 issue at -- at hand, if I may, that brings that
18 uncertainty to a fore, and also brings me to the
19 -- a little bit to a comment that -- to the part
20 of the comments that I was going to make. We're
21 not really -- the chasm isn't as big.

22 The -- the problem is that the data that
23 we have indicates that the volcanic nature of the
24 aquifer makes the transmissivity of water -- and
25 I'm stepping on the edge of my technical knowledge

1 here -- very, very rapid, very fast. And it also
2 makes it likely that it does not occur equally in
3 -- in equal impact in equal directions. So that
4 if you have a draw-down in the new project well,
5 either you can -- and you can calculate the -- the
6 location according to some formula, the shape of
7 the draw-down cone may not encompass that well,
8 and you can miss it because you put it out just a
9 little bit too far. And apparently you can also
10 miss it because you put it in the wrong direction,
11 because of the anisotropic nature of the -- of the
12 aquifer.

13 So the situation is you could miss the
14 draw-down that you need to have a satisfactory
15 aquifer test. And one of the things that we've
16 discussed among ourselves and have -- have
17 considered, is drawing up a change to the aquifer
18 test that includes more monitoring wells, so that
19 we don't have that opportunity. If we could find
20 a way to be certain that we could do that aquifer
21 test one time and one time only, and then proceed
22 with the mitigation before the commissioning of
23 the plant, that would provide us with the
24 certainty and the finality that we need.

25 MS. PRAUL: What's the cost of the

1 monitoring?

2 MR. McFADDEN: I do not know. It's not
3 severe.

4 PRESIDING MEMBER KEESE: Let me ask one
5 additional question. The only options for
6 disposing of this water in this quantity are
7 through storage in a tank, or through use in the
8 plant?

9 MR. McFADDEN: Or through use in the
10 community, as Mr. Suppa, of the Burney Water
11 District, pointed out to me, that we would have a
12 little bit longer and perhaps quite a bit longer
13 run if the aquifer test could be done in -- in the
14 summertime. It could run longer than 40 hours.

15 PRESIDING MEMBER KEESE: There -- there
16 is not an option of dropping the river somewhere.

17 MR. McFADDEN: Not that I'm aware of.

18 PRESIDING MEMBER KEESE: I just -- they
19 tested a -- they tested a well behind my house and
20 it created a culvert in the --

21 MR. McFADDEN: Well, I think that one of
22 the points that Ms. Bond made in her testimony was
23 that because of the volcanic nature of the --
24 because of the volcanic nature of the -- the soil
25 in the aquifer it's inappropriate to discharge the

1 water to the ground, especially in this particular
2 circumstance.

3 PRESIDING MEMBER KEESE: Thank you.

4 HEARING OFFICER BOUILLON: Mr. Turner,
5 do you have any redirect?

6 REDIRECT EXAMINATION

7 BY MR. TURNER:

8 Q Well, I think, Mr. McFadden, you already
9 addressed, in a previous answer, the material that
10 you wanted to respond to Mr. Bouillon's opening
11 statement. Correct?

12 A Yes. I wanted to -- to confirm our
13 belief that while we're -- we're maintaining our
14 position and the Staff is maintaining their
15 position, that with the cooperation that we've had
16 over the last few days, and with the Intervenors
17 and other parties, as well, I -- I do believe that
18 this can be resolved in ample time to stay on the
19 schedule we're on now.

20 Q And second, Mr. McFadden, in response to
21 the question regarding the number of wells within
22 the potential impact area, I believe you cited the
23 number, you thought there might be 35. Would
24 those be predominantly residential wells, that
25 number of 35?

1 A Yes, they would. And that was done
2 merely from recollection of a -- of pictures that
3 we -- that we have in our other testimony. It's
4 either in testimony or in the administrative
5 record that I looked at, and it -- and it
6 encompasses a circular impact area which would be
7 based on a -- an isotropic situation.

8 But I believe that in that two mile
9 circle there'd be about 35 wells, and, once again
10 from memory, that could potentially be -- could
11 potentially be impacted, and almost all of them
12 were residential. Some of them were no longer in
13 service.

14 PRESIDING MEMBER KEESE: And you would
15 generally agree with Mr. Hathaway's analysis that
16 perhaps two -- two large commercial wells?

17 MR. McFADDEN: Yes, I think there's
18 two --

19 PRESIDING MEMBER KEESE: Two
20 agricultural wells.

21 MR. McFADDEN: -- two large agricultural
22 wells, and I believe that those agricultural
23 wells, there's evidence that shows that those two
24 agricultural wells don't interfere with each
25 other, so that if there was interference with one

1 from our test, it's not likely that there'd be
2 interference with the other.

3 MR. TURNER: That's all I have, Mr.
4 Bouillon.

5 MS. CROCKETT: I have a direct -- cross.
6 I have one other well to add to that. There is a
7 community service well.

8 HEARING OFFICER BOUILLON: Ask him if
9 there is a community service well.

10 FURTHER RECROSS EXAMINATION

11 BY MS. CROCKETT:

12 Q Is there a community service well in
13 Johnson Park that could be impacted?

14 A I -- I believe in the two mile radius
15 that I was discussing, the -- the Johnson Park
16 community well was there. And I also believe that
17 in that two mile radius the Burney Water District
18 -- there's a couple of Burney Water District wells
19 at least are in there, too.

20 Q Thank you.

21 My other cross would be, you stated that
22 the equipment that you chose for this hybrid dry
23 cooling has a temperature setting of 48 and 98.
24 Are those changeable? Would you order it from the
25 factory that way, or is there a way the equipment

1 can be altered during a specific time period to
2 run at slightly higher temperatures, less cool
3 temperatures, and less warm temperatures?

4 A The equipment will run at whatever
5 temperature is -- is ambient. But the question
6 is, how much cooling will it provide. And -- and
7 the equipment is designed in every case for a
8 specific operating point. And in the case of
9 condensing equipment, that -- that point is
10 related to the ambient temperature.

11 And so the sizing of the cooler -- and
12 I'm sure you recall the many arguments as to
13 whether it would or would not fit on the site --
14 determines the size of the dry cooler. And we
15 have selected the dry cooler size to fit, just
16 barely, onto the site, using the 48 degree ambient
17 temperature design point.

18 Now, it doesn't have to be 48 degrees
19 for that dry cooler to do some condensing, but
20 it'll do more condensing at lower than 48 degrees
21 but considerably less at higher than 48 degrees.
22 And similarly, the wet cooler is designed to
23 condense all of the steam when the temperature is
24 98 degrees. It will condense it all when it is 78
25 degrees, but if it goes up to 108 degrees, which

1 is the highest recorded temperature ever in
2 Burney, it -- it'll either increase the
3 backpressure or it won't condense all the steam.

4 Q You're talking about those various
5 discussions/arguments on the dry cooling and
6 fitting on the property. Do you still have the
7 schematic submitted by CURE for 100 percent dry
8 cooling that would fit on the property?

9 A No. I don't have that drawing.

10 MS. CROCKETT: That's my only questions.
11 Thank you.

12 HEARING OFFICER BOUILLON: Ms. Holmes.

13 MS. HOLMES: I have a -- I guess it's
14 more of a procedural question. Mr. McFadden has
15 made a number of statements about hydrology that
16 Staff believes could be clarified, or perhaps even
17 corrected, but I -- I don't believe he's
18 testifying as an expert witness. So as long as
19 those statements cannot be used as expert
20 testimony, I think we'll forego any cross.

21 Is that -- is that understood?

22 HEARING OFFICER BOUILLON: Mr. McFadden
23 has testified within the limits of his expertise,
24 as stated in his qualifications. And any comments
25 he made about hydrology, of course, will be taken

1 in context.

2 MS. HOLMES: Thank you.

3 MR. TURNER: Mr. Bouillon, before he
4 steps down, could I just follow up on Ms.
5 Crockett's last question regarding the CURE
6 schematic?

7 HEARING OFFICER BOUILLON: I don't see
8 the need to, but if you insist.

9 MR. TURNER: I'm not insisting. It's
10 your proceeding.

11 HEARING OFFICER BOUILLON: I don't -- I
12 don't think we need that.

13 You can -- you're excused.

14 MR. TURNER: Thank you.

15 (Inaudible asides.)

16 HEARING OFFICER BOUILLON: We will turn
17 to the topic of Biological Resources at this time.
18 And we've already had the testimony of Maria
19 Ellis. At this time we have a Staff witness and
20 four witnesses for the Applicant. Burney Resource
21 Group has indicated a desire for cross examination
22 of all of those witnesses, and the Staff has
23 indicated a desire to cross examine only one of
24 the Applicant's witnesses.

25 Is that still correct?

1 MS. HOLMES: That's not, and I'd like to
2 point out that we have a representative from the
3 U.S. Fish and Wildlife Service today who's
4 prepared to testify about what the process for the
5 -- where the process for the Biological Opinion
6 currently is.

7 HEARING OFFICER BOUILLON: That --
8 that's Mr. Epanchin?

9 MS. HOLMES: Mr. Epanchin. Yes.

10 HEARING OFFICER BOUILLON: At this time
11 I think we'll take the Applicant witnesses. Mr.
12 Garcia -- how many of your witnesses do you have
13 here?

14 MR. TURNER: We actually have all of our
15 witnesses here, Mr. Bouillon. We have Mr. Garcia,
16 Ms. Chainey-Davis, Mr. Jackman, and Mr. McFadden,
17 who were on the direct Biological testimony, and
18 then we have Mr. Sheahan and Mr. Garcia, who are
19 on the rebuttal Biological testimony.

20 HEARING OFFICER BOUILLON: If -- maybe
21 they could all come up as a panel. We'll get some
22 more chairs up here.

23 And while we're doing that, if I might
24 inquire from Ms. Holmes, do you wish the Fish and
25 Wildlife person and the Staff person to testify as

1 a panel?

2 MS. HOLMES: It really doesn't matter.

3 HEARING OFFICER BOUILLON: I don't
4 believe all of these witnesses have previously
5 been sworn. Would those who have not previously
6 been sworn please stand.

7 (Thereupon Ronald Jackman, Carolyn
8 Chainey-Davis, and John Garcia were,
9 by the reporter, sworn to tell the
10 truth, the whole truth, and nothing
11 but the truth.)

12 MR. JACKMAN: I do.

13 MR. GARCIA: I do.

14 MS. CHAINEY-DAVIS: I do.

15 HEARING OFFICER BOUILLON: Mr. Turner.

16 MR. TURNER: Thank you.

17 DIRECT EXAMINATION

18 MR. TURNER: Mr. Garcia, Ms. Chainey-
19 Davis, Mr. Jackman, and Mr. McFadden, did you
20 prepare the direct testimony on Biological
21 Resources, accompanied by eight exhibits, that was
22 submitted by Three Mountain Power on December 1st,
23 2000?

24 MR. SHEAHAN: Yes.

25 MS. CHAINEY-DAVIS: Yes, I did.

1 MR. GARCIA: Yes, I did.

2 MR. McFADDEN: Yes.

3 MR. TURNER: To the four of you again,
4 was a copy of your individual qualifications
5 submitted with that testimony?

6 MR. SHEAHAN: Yes, they were.

7 MS. CHAINEY-DAVIS: It was.

8 MR. GARCIA: That's correct.

9 MR. McFADDEN: Yes.

10 MR. TURNER: Mr. McFadden, was yours not
11 submitted with the Air Resources testimony?

12 MR. McFADDEN: That -- that's correct.
13 Mine may have been submitted with the Air
14 Resources testimony.

15 MR. TURNER: Mr. Garcia and Mr. Sheahan,
16 did you prepare the rebuttal testimony on
17 Biological Resources that was submitted by Three
18 Mountain Power on December 7th, 2000?

19 MR. SHEAHAN: Yes.

20 MR. GARCIA: Yes, we did.

21 MR. TURNER: Panel Members together, do
22 any of you have corrections or modifications to
23 either piece of testimony?

24 MS. CHAINEY-DAVIS: I have one
25 correction.

1 MR. TURNER: Would you indicate, Ms.
2 Chainey-Davis, what that is, please?

3 MS. CHAINEY-DAVIS: On page 6 of the
4 testimony, paragraph --

5 MR. TURNER: This is the direct
6 testimony you're referring to?

7 MS. CHAINEY-DAVIS: To my -- yes, direct
8 testimony. Page 6, paragraph 5.

9 HEARING OFFICER BOUILLON: If I can find
10 -- all right.

11 MS. CHAINEY-DAVIS: Okay. Page 6,
12 paragraph 5.

13 HEARING OFFICER BOUILLON: Yes.

14 MS. CHAINEY-DAVIS: First sentence,
15 where it says Bellinger's Meadow Foam was found.
16 Bellinger's.

17 HEARING OFFICER BOUILLON: I'm not --
18 or, yes. Two new populations of Bellinger's
19 Meadow Foam?

20 MS. CHAINEY-DAVIS: Correct. Yes.
21 Could you change Bellinger's to Woolly Meadow
22 Foam, W-o-l-l-y -- W-o-o-l-l-y. Yeah, W-o-o-l-l-
23 y.

24 HEARING OFFICER BOUILLON: Two l's and
25 two o's.

1 MS. CHAINEY-DAVIS: It's two o's and two
2 l's. It trips everybody.

3 And then in parentheses, it shows the
4 status, and that needs to be changed from a List
5 2, CMPS List 2, to a CMPS List 4.

6 HEARING OFFICER BOUILLON: I have CMPS
7 List 1-B in that sentence.

8 MS. CHAINEY-DAVIS: Oh, from a 1-B to a
9 4. I'm sorry.

10 HEARING OFFICER BOUILLON: To a 4?

11 MS. CHAINEY-DAVIS: To a 4. And that's
12 it.

13 MR. TURNER: Panel, are these
14 testimonies true and correct to the best of your
15 knowledge?

16 MR. SHEAHAN: Yes.

17 MR. JACKMAN: Yes.

18 MS. CHAINEY-DAVIS: Yes.

19 MR. GARCIA: Yes.

20 MR. McFADDEN: Yes.

21 MR. TURNER: Panel, you're aware that
22 Three Mountain Power and CEC Staff entered into a
23 stipulation regarding Water and Biological
24 Resources on December 7th, 2000, are you not?

25 MR. GARCIA: Yes, I am.

1 MS. CHAINEY-DAVIS: I am.

2 MR. JACKMAN: Yes, I am.

3 MR. McFADDEN: Yes.

4 MR. SHEAHAN: Yes.

5 MR. TURNER: And have all of you

6 reviewed that stipulation?

7 MR. SHEAHAN: Yes.

8 MS. CHAINEY-DAVIS: Yes, I have.

9 MR. GARCIA: Yes, we have.

10 MR. JACKMAN: Yes.

11 MR. McFADDEN: Yes.

12 MR. TURNER: Mr. Garcia and Ms. Chainey-

13 Davis and Mr. Jackman, do you agree with the

14 stipulation's provisions as they relate to

15 Biological Resources?

16 MR. JACKMAN: Yes, I do.

17 MS. CHAINEY-DAVIS: I do.

18 MR. GARCIA: Yes, they're agreeable.

19 MR. TURNER: Mr. Garcia, are you

20 familiar with the final Environmental Impact

21 Report prepared for the Hat Creek project?

22 MR. GARCIA: Yes, I am.

23 MR. TURNER: And is there any

24 information in that Environmental Impact Report

25 that would cause you to change any of the Panel's

1 Biological Conclusions regarding Biological
2 Resource impacts of the Three Mountain Power
3 Project?

4 MR. GARCIA: No, there -- there is not.

5 MR. TURNER: And is that based solely on
6 your review of the Environmental Impact Report, or
7 on additional information, as well?

8 MR. GARCIA: No, it is based on my
9 review of the impact report, as well as a review
10 of how much water is going to be used, as well as
11 the testimony provided by Ms. Bond from CEC, and
12 by Mr. -- Tom, here, on the amount of water that's
13 going to be used and that there would not be a
14 significant impact. And therefore, the subsequent
15 impact, potential impacts on the springs would not
16 be there.

17 MR. TURNER: Again, Mr. Garcia, based on
18 your review of the Environmental Impact Report,
19 your familiarity with the Three Mountain Power
20 Project, including the testimony that you just
21 referenced of Ms. Bond yesterday, and Mr. Sheahan
22 today, in your opinion, does the Environmental
23 Impact Report for the Hat Creek project indicate
24 any additional new significant cumulative impact
25 on Biological Resources that would occur if the

1 Hat Creek project were to be approved?

2 MR. GARCIA: In my opinion it does not.

3 MR. TURNER: And, finally, similarly in
4 your opinion, does the Hat Creek project EIR
5 indicate that any cumulative impact of the Three
6 Mountain Power Project will be substantially more
7 severe were the Hat Creek project to be approved?

8 MR. GARCIA: No, it -- it doesn't have a
9 significant impact if it was approved.

10 MR. TURNER: There would be no
11 substantially more severe impact, in your opinion?

12 MR. GARCIA: There would substantially
13 be no -- no additional severe impact.

14 MR. TURNER: Mr. Bouillon, this Panel is
15 available for cross examination.

16 HEARING OFFICER BOUILLON: Ms. Crockett?

17 MS. CROCKETT: I would defer to Staff,
18 in case they have the same questions I would have.

19 HEARING OFFICER BOUILLON: Does Staff
20 have any questions?

21 MS. HOLMES: No questions.

22 MS. CROCKETT: And at this time Burney
23 Resource Group has no questions. You have more
24 time on your schedule.

25 HEARING OFFICER BOUILLON: All right.

1 We'll mark their -- well, their testimony has
2 already been marked. Are you offering it as --

3 MR. TURNER: I would move its
4 introduction into evidence, Your Honor.

5 HEARING OFFICER BOUILLON: Based on a
6 lack of cross examination, it will be accepted.

7 You're excused.

8 MR. TURNER: Thank you very much.

9 HEARING OFFICER BOUILLON: Thank you all
10 very much. I hope you had a nice trip up here.

11 (Laughter.)

12 HEARING OFFICER BOUILLON: Staff.

13 MS. HOLMES: Staff's witness is Linda
14 Spiegel. Would you like to call --

15 HEARING OFFICER BOUILLON: I think we'll
16 call them together.

17 MS. HOLMES: And so then we'd also call
18 Peter Epanchin of the U.S. Fish and Wildlife
19 Service.

20 (Thereupon Linda Spiegel and
21 Peter Epanchin were, by the
22 reporter, sworn to tell the truth,
23 the whole truth, and nothing but
24 the truth.)

25 MS. HOLMES: Would each of you please

1 clearly state your names for the record, spelling
2 your last name?

3 MR. EPANCHIN: My name is Peter
4 Epanchin. The last name is spelled E-p-a-n-c-h-i-
5 n. I'm with the U.S. Fish and Wildlife Service.

6 MS. SPIEGEL: Linda Spiegel, S-p-i-e-g-
7 e-l. I'm with the Energy Commission.

8 TESTIMONY OF

9 LINDA SPIEGEL

10 called as a witness on behalf of Commission Staff,
11 having first been duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HOLMES:

15 Q Ms. Spiegel, did you prepare the
16 Biological Resources testimony that's contained in
17 the FSA, Part 3, which has been identified as
18 Exhibit 65?

19 A Yes.

20 Q Were your qualifications included in
21 that?

22 A Yes.

23 Q Do you have any corrections to your
24 testimony?

25 A Yes, I do.

1 Q Why don't you walk us through them?

2 A I actually have a replacement for a
3 couple of paragraphs on page 46. And I have those
4 written out, and we can -- these changes don't
5 change the analysis at all. It just provides some
6 clarification on some -- on some problems when I
7 was editing the -- the -- an original version of
8 this manuscript.

9 Q Do you have any corrections in addition
10 to those identified on the pages that have been
11 handed out?

12 A Yeah. On page 41 --

13 HEARING OFFICER BOUILLON: Excuse me a
14 moment, before we go on to that, page 41.

15 Ms. Crockett, with regard to page 46,
16 have you had a chance to examine these changes?

17 MS. CROCKETT: No. I'm comfortable with
18 this comment.

19 HEARING OFFICER BOUILLON: Go on, page
20 41.

21 THE WITNESS: Page 41, the third
22 paragraph, last sentence, that begins with Crystal
23 Lake Springs. Crystal Lake Springs located in the
24 Hat Creek subdrainage and supports one of five
25 remaining -- that should be seven.

1 HEARING OFFICER BOUILLON: One of -- one
2 of the seven remaining?

3 THE WITNESS: One of seven.

4 MS. CROCKETT: Are we on page 41?

5 THE WITNESS: Yes. Third paragraph --

6 MS. CROCKETT: Okay.

7 THE WITNESS: -- last sentence.

8 MS. CROCKETT: Thank you.

9 THE WITNESS: And then on the same page,
10 the last paragraph, where it says Garcia and
11 Associates 2000, and in. "In" should be deleted.

12 Page 47, second full paragraph, second
13 to the last sentence, starting with Crystal Lake
14 supports one of the five, that should be seven.

15 Page 50, second paragraph -- let's see,
16 one, two, three, four, five, six, seven, eight --
17 eight line -- eighth line down, where it says
18 constructing a successful signal crayfish barrier
19 could be an increase. Just "be an" should be
20 deleted.

21 Then that same paragraph, next two or
22 three sentences, where it begins after
23 discussions, that -- the rest of that -- beginning
24 at after discussions to the end of that paragraph
25 should be deleted.

1 MS. CROCKETT: Would you repeat that,
2 please?

3 THE WITNESS: That same paragraph that
4 we were in a minute ago, okay. If you go down to
5 where the sentence beginning after discussions,
6 from beginning there to the rest -- to the end of
7 that paragraph should be deleted.

8 HEARING OFFICER BOUILLON: You're
9 talking about everything in that paragraph after
10 the figure \$250,000.

11 THE WITNESS: Yes. That's all.

12 BY MS. HOLMES:

13 Q That concludes your corrections? With
14 those corrections are the facts in your testimony
15 true and correct to the best of your knowledge?

16 A Yes.

17 Q And do the opinions contained in your
18 testimony represent your best professional
19 judgment?

20 A Yes.

21 MS. HOLMES: We'll forego the need for a
22 summary, and simply make the witness available for
23 cross examination. Unless you'd like to move to
24 Mr. Epanchin and have them testify at the same
25 time.

1 MR. EPANCHIN; I so far haven't
2 submitted any testimony. We're -- Fish and
3 Wildlife Service will be presenting a Biological
4 Opinion.

5 MS. HOLMES: Perhaps I could ask him a
6 few questions to sort of lay the foundation for
7 what he might say.

8 TESTIMONY OF

9 PETER EPANCHIN

10 called as a witness on behalf of Commission Staff,
11 having first been duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HOLMES:

15 Q What's your responsibility within U.S.
16 Fish and Wildlife Service?

17 A I review projects as they come in.
18 Geographically the Three Mountain Power Project is
19 in my area that I review.

20 Specifically, I review the projects and
21 their potential effects to endangered species,
22 federally endangered species.

23 Q And do you have a responsibility with
24 U.S. Fish and Wildlife Service with respect to the
25 Three Mountain Project?

1 A Yes. They've initiated consultation,
2 and I am going to be -- I have been preparing a
3 Biological Opinion, which will authorize take of
4 the Shasta crayfish and the Bald Eagle and
5 Northern Spotted Owl.

6 Q And have you read the testimony of Linda
7 Spiegel?

8 A I have.

9 Q And with respect to those issues that
10 are of concern to the U.S. Fish and Wildlife
11 Service within her testimony, would you generally
12 agree with her conclusions?

13 A Yes.

14 Q My understanding is that Ms. Spiegel has
15 included in her testimony certain what she refers
16 to as mitigation measures that are designed to
17 protect endangered species. In addition, I
18 believe that the Applicant included those are
19 project features in its Biological Assessment. Is
20 that correct?

21 A Yes.

22 Q And are those, whether you refer to them
23 as mitigation measures or project features, that
24 are designed to minimize impacts to species, do
25 you believe that those will be sufficient to allow

1 the U.S. Fish and Wildlife Service to issue a
2 Biological Opinion for the project?

3 A We will authorize take for the project.
4 We don't, I guess, see the -- we don't -- we don't
5 -- in consultation, we don't have projects that
6 will -- I guess you can't mitigate away the
7 effects. We still have to authorize take.

8 Though Ogden has done well by going from
9 a -- the original proposed project design to a
10 wet/dry hybrid, the highest level of protection to
11 the aquatic resources would be achieved through a
12 dry cooling system, we will be authorizing take,
13 as the project stands, in our Biological Opinion
14 for the Shasta crayfish.

15 MS. HOLMES: Thank you. With that, then
16 both witnesses are available for cross
17 examination.

18 HEARING OFFICER BOUILLON: Before we
19 begin, Mr. Epanchin, when will your Biological
20 Opinion be issued? Do you have a date yet?

21 MR. EPANCHIN: The date that it's due is
22 January 11th. It's based on --

23 HEARING OFFICER BOUILLON: And do you
24 expect to meet that date?

25 MR. EPANCHIN: -- on -- it's based on

1 135 days after we receive consultation, or request
2 for consultation.

3 HEARING OFFICER BOUILLON: And do you
4 expect to meet that date?

5 MR. EPANCHIN: Trying hard.

6 HEARING OFFICER BOUILLON: Mr. Turner,
7 do you have any questions?

8 MR. TURNER: No, I have no questions for
9 either witness.

10 HEARING OFFICER BOUILLON: Ms. Crockett.

11 MS. CROCKETT: Yes, thank you.

12 CROSS EXAMINATION

13 BY MS. CROCKETT:

14 Q Mr. Epanchin, would you clarify what
15 authorizing a take for the operation means?

16 A Sure. Part of the Biological Opinion
17 authorizes -- we issue an incidental take
18 statement that is written in to the Biological
19 Opinion, and what that will be is we -- we won't
20 be authorizing take of -- of individual Shasta
21 crayfish. We won't be saying yes, you have -- you
22 can kill so many crayfish. That's not -- we don't
23 anticipate that form of take to occur.

24 The type of take that -- that we will be
25 issuing is habitat modification in the form of

1 spring discharges, or changes to those springs.
2 Right now it's based on the analysis as presented
3 in the FSA, as well as the Biological Assessment.
4 WE're looking at changes on the -- in the
5 neighborhood of one to two percent, so that's what
6 we will be authorizing take, for habitat
7 modifications, one to two percent of changes to
8 the spring discharges.

9 Q So my question would be, then, you
10 expect minimal, but some impact to the springs?

11 A Correct.

12 MS. CROCKETT: Thank you. I may be
13 asking some more questions.

14 Going over the FSA, Ms. Spiegel, there's
15 a lot of questions.

16 CROSS EXAMINATION

17 BY MS. CROCKETT:

18 Q Starting on page 39, bullet number 3.
19 You expect some habitat degradation from the power
20 plant, and that would fully line up with Mr.
21 Epanchin's statement. Is that correct?

22 A The habitat degradation from the power
23 plant use, the water use would be included in
24 that. That's --

25 Q So you do anticipate some habitat

1 degradation?

2 A No, I -- what I'm saying here is that
3 the reduction in spring flow would fall under that
4 -- that heading of habitat degradation.

5 Q Okay. Turning the page to 40. How much
6 -- actually, you just answered that question, as
7 well.

8 You stated -- I'm moving to page 41.
9 You stated that there was a cursory level of the
10 survey protocols. How complete or incomplete do
11 you feel the survey levels were?

12 A Well, the surveys for the terrestrial,
13 most were not conducted, and it says so in the
14 Biological Assessment, or the survey that the --
15 the results of the spring survey in the Ganda
16 Report.

17 So to the extent that they were not --
18 they were not conducted at the appropriate time of
19 year. The -- they did not have permits for -- to
20 conduct surveys for the -- for the crayfish, so
21 they based their surveys there on suitability of
22 the habitat. And just visual, visually looking.

23 Q Just visual.

24 Page 46, third paragraph -- or second
25 paragraph, second full paragraph, first line. You

1 have -- everyone has stated, and you've reiterated
2 here, difficult to quantify from the cumulative
3 impacts, but Mr. Epanchin just stated maybe a one
4 to two percent decrease in the spring discharge.
5 Are you comfortable with that evaluation?

6 A No. The one to two percent is based on
7 Three Mountain Power's use alone. Not the
8 cumulative impact.

9 Q Okay. Since the springs already exist
10 with the summer use and consumptive use, summer
11 impacts of consumptive use and habitat has
12 adjusted to this 34 percent reduction in flow, the
13 additional one or two percent on top of that would
14 be considered insignificant.

15 MS. HOLMES: I'm sorry. Are you reading
16 from her testimony somewhere? Could you please
17 point us to --

18 MS. CROCKETT: No, I'm in the same
19 paragraph, just kind of condensing what she has
20 said to ask my question.

21 MS. HOLMES: Okay. Can you restate the
22 question, please?

23 MS. CROCKETT: Okay.

24 HEARING OFFICER BOUILLON: Ms. Crockett,
25 if I might inquire. Are you on the new page 46?

1 MS. CROCKETT: No -- oh. No, I'm on the
2 old page 46. Thank you.

3 BY MS. CROCKETT:

4 Q The last line you have under the third
5 paragraph, third full paragraph, that you have
6 underlined, where it says however, summer flows.
7 The second full paragraph, and you have it
8 underlined. Would additional use have a
9 significant impact on those reductions?

10 MS. HOLMES: I'm going to object to that
11 question, to the extent that it's asking for
12 hydrologic conclusions. I believe that Ms.
13 Spiegel's testimony took the conclusions of
14 Staff's Water testimony as a given. She's not
15 qualified to ask about additional hydrologic
16 impacts.

17 So to the extent that the question is
18 asking for -- it's based on a hypothetical about
19 hydrological issues, I would -- I would have to
20 object to it.

21 HEARING OFFICER BOUILLON: Since it is
22 in her testimony I'm going to allow the witness to
23 say she's not qualified to answer that question.
24 And if that's so, that is an appropriate answer.

25 MS. SPIEGEL: Well, quite frankly, I

1 don't really understand her question.

2 (Laughter.)

3 HEARING OFFICER BOUILLON: I wasn't sure
4 I understood it either, which is why I left it to
5 you.

6 BY MS. CROCKETT:

7 Q Mr. Epanchin states that there may be a
8 one to two percent reduction in spring flow. He
9 stated that just moments ago. And we're looking
10 at a 70 -- a 67 percent reduction in spring flow
11 during summer flows, during drought.

12 Would the additional one to two percent
13 reduction in spring flow affect the biota of those
14 springs?

15 A Well, okay. I still think you're
16 getting a few of the things confused. The one and
17 two percent deal with reductions from Three
18 Mountain Power use alone, one percent during
19 normal hydrological year, rain years; the second,
20 during drought years. That's just them.

21 But you're in the cumulative impact
22 section, and what I did there was -- and I did use
23 Linda Bond's water analysis to come up with this.
24 And the -- the percent reduction in flows would be
25 dependent on the amount of water in an aquifer at

1 any given time. Okay. And when you have a
2 drought, that number goes down. And then when you
3 have a prolonged drought, that number goes down
4 for longer and less.

5 And so any -- Three Mountain Power's
6 use, as well as any water use in that area would
7 cumulatively contribute to reduction in the flows.
8 And Three Mountain Power's use, according to our
9 Staff, Water Staff analysis, was determined to be
10 three percent of the consumptive use. So you can
11 say proportionately it would have that reduction
12 in flow of -- if you looked at it for consumptive
13 use total flow.

14 Q Thank you. And then moving right down
15 to the following paragraph, on new page 46, you
16 make the comment that thereby exasperating --
17 exacerbating an already stressed ecosystem. Could
18 you clarify that?

19 A Well, that's just what I'm -- I said.
20 In other words, when you have a drought and you
21 have low flows, and your consumptive use is here
22 but your -- but your availability's going down,
23 then you're going to exasperate -- any consumptive
24 use by anybody's going to exasperate that
25 situation.

1 Q And would you clarify, on page 47,
2 second -- first full paragraph, the last sentence.
3 Why would these isolated island populations be at
4 higher risk?

5 A Because any --when you have an isolated
6 population and you -- you're dealing with a
7 species that's not necessarily, you know, it
8 doesn't have long dispersal movements, like these
9 terrestrial mollusks is what I'm referring to
10 here, aquatic and terrestrial mollusks is what I'm
11 referring to here, you don't have the immigration,
12 you don't have the gene flow. If -- if you -- if
13 you reduce a population within a given area down
14 too small you -- it may take longer for that to
15 infill back again. Does that --

16 Q And then we're talking about Crystal
17 Lake in the following paragraph. And you state at
18 the last sentence of that paragraph that you feel
19 that any threat to the Crystal Lake spring could
20 be a significant cumulative impact. Am I reading
21 that correctly?

22 A Oh, I didn't say any. I just said
23 threat to the spring --

24 Q Threat.

25 A -- would be a significant cumulative

1 impact.

2 Q Under operation on page 49, would you
3 elaborate on the -- the second paragraph, the last
4 part of the last sentence from the comma forward,
5 where it starts the new pumping.

6 A Well, as my -- as I said in my analysis,
7 that the cumulative impact that I just described
8 has the potential to be a significant adverse
9 impact during severe drought and prolonged
10 drought.

11 Q Somewhere in your paper, and I may have
12 it here, you talk about droughts. I have it
13 highlighted. You feel that the concept of a five
14 year drought is not accurate. Would you elaborate
15 on that?

16 A Well, the concept of a five -- it's not
17 necessarily the concept.

18 Q The longest --

19 A Right. There's -- there's a --

20 Q It's at the bottom of your new page 46.

21 A Right. There is -- there's a figure in
22 the water analysis section that has water data
23 from I believe starting in 1905 or something. And
24 in -- throughout that time, it shows a period of
25 three or so years of lower than normal --

1 subsequent lower than normal rainfall years.

2 And one of them was pretty long. The
3 five year drought was not the longest one on
4 record that -- that we have in that graph.

5 MS. CROCKETT: Thank you. I think covers
6 my questions for the witness.

7 HEARING OFFICER BOUILLON: Ms. Holmes,
8 any redirect?

9 MS. HOLMES: No.

10 HEARING OFFICER BOUILLON: Would you
11 care to offer those sections of the FSA?

12 MS. HOLMES: Yes.

13 HEARING OFFICER BOUILLON: Any
14 objection?

15 MS. CROCKETT: No objection.

16 HEARING OFFICER BOUILLON: It will be
17 admitted.

18 (Thereupon the Biological Resources
19 testimony portion of Exhibit 65 was
20 received into evidence.)

21 HEARING OFFICER BOUILLON: The witnesses
22 may be excused, I think. Any reason they should
23 not be?

24 You are excused. Thank you very much.

25 (Inaudible asides.)

1 MS. CROCKETT: No, I was looking at my
2 watch, saying I can get some shopping done.

3 HEARING OFFICER BOUILLON: This will
4 conclude the hearing.

5 We are going to take the motion of the
6 Burney Resource Group under submission based upon
7 the evidence we've heard in the last two days
8 about their request for a delay in the hearings,
9 and continued hearings, based upon the Hat Creek
10 project. We will review the transcripts and issue
11 a ruling on that request.

12 In the meantime, and to assist us in
13 making that ruling, we're going to request
14 briefing from the parties on those issues they
15 feel necessary to brief. I'm not talking about
16 every topic in Parts 2 and Part 3. But on those
17 topics where any party feels briefing would be
18 helpful to the Committee, we would appreciate it.

19 MS. CROCKETT: Only related to Hat
20 Creek.

21 HEARING OFFICER BOUILLON: What?

22 MS. CROCKETT: Only related to Hat
23 Creek.

24 HEARING OFFICER BOUILLON: And this will
25 be on all of the issues, not just the cumulative

1 effect of the Hat Creek project.

2 In that regard, given the holidays
3 coming up within the week and the following week,
4 we're going to request that the briefs be filed --
5 be postmarked on or before January 9, which is a
6 Tuesday, and that reply briefs be filed on or
7 before January 17th -- not filed, but postmarked,
8 also.

9 That will enable everybody to review the
10 transcript and get those briefs out. If there are
11 significant delays in getting the transcripts, we
12 might have to consider changing the dates for
13 those briefs. But I think that should allow us
14 sufficient time.

15 At that -- after receipt of those
16 closing briefs, we'll issue an order about the
17 need for continued hearings.

18 MS. CROCKETT: Question on
19 clarification. The briefing would also take in
20 the Water Conditions of Certification for the well
21 impact, that would be the possible continuation on
22 that area, or has that been decided? We are
23 unclear on that.

24 HEARING OFFICER BOUILLON: The briefing
25 will include issues of interest to you regarding

1 everything that's been talked about in the last
2 two days.

3 MS. CROCKETT: Okay.

4 HEARING OFFICER BOUILLON: Okay? Now,
5 it would not be worth your time to spend time
6 briefing the topics we took by way of stipulation,
7 where there is no argument about the evidence.

8 MS. CROCKETT: Right.

9 HEARING OFFICER BOUILLON: But for all
10 of the topics that are -- that are controversial,
11 where you have a position that is not in complete
12 agreement with either the Staff or the Applicant,
13 you should brief those issues.

14 MS. CROCKETT: Okay.

15 HEARING OFFICER BOUILLON: And we're
16 talking about argument. Now you get to say
17 anything you want.

18 (Laughter.)

19 HEARING OFFICER BOUILLON: You don't
20 have to ask questions anymore. But you should --
21 those briefs should make citations to the record
22 where available, and you will have the transcript.
23 And so if you want to talk about somebody's
24 testimony, you should refer that either to the
25 document by exhibit number, and page number, or to

1 the transcript by page number.

2 MS. CROCKETT: Since --

3 HEARING OFFICER BOUILLON: You'll have
4 that transcript before you need to supply your
5 brief.

6 MS. CROCKETT: It is my understanding,
7 and I need clarification as being new at this, and
8 I do apologize, that the brief will only adhere to
9 what's been established in testimony in areas of
10 evidence, only those particular things that are
11 available to all parties.

12 HEARING OFFICER BOUILLON: That's
13 correct.

14 MS. CROCKETT: Thank you.

15 MR. ZISCHKE: And actually, to clarify
16 that, what we should be briefing from is what has
17 been -- not just what's been available to the
18 parties, but what's actually been introduced into
19 testimony in these hearings, like the -- the
20 numbered testimony, the transcripts, and -- is
21 that correct?

22 HEARING OFFICER BOUILLON: That --
23 that's correct. What we have are 83 exhibits,
24 which comprise both the testimony and documents
25 used to support that testimony.

1 MS. CROCKETT: Okay.

2 HEARING OFFICER BOUILLON: That's what
3 you will rely on, plus the transcript of the oral
4 proceedings we've had, which will be prepared by
5 the court reporter and you'll be given a copy of
6 that.

7 MS. CROCKETT: Understood.

8 HEARING OFFICER BOUILLON: That's what
9 you will limit yourself to by way of facts. By
10 way of argument, that's when you --

11 MS. CROCKETT: Thank you.

12 HEARING OFFICER BOUILLON: But based on
13 fact.

14 MS. CROCKETT: Only on fact. Thank you.

15 HEARING OFFICER BOUILLON: And it's my
16 understanding that as part of the testimony of the
17 Applicant that it incorporated the appropriate
18 portions of the FSA also. Is that correct, Mr.
19 Zischke? That when we --

20 MR. ZISCHKE: The Final Staff
21 Assessment? The AFC.

22 HEARING OFFICER BOUILLON: The AFC. I'm
23 sorry, the AFC.

24 MR. ZISCHKE: Yes, that's correct.

25 HEARING OFFICER BOUILLON: As modified

1 through subsequent -- at least one modification to
2 the AFC.

3 And by now we should have admitted all
4 parts of -- all three parts of the FSA.

5 MS. HOLMES: That's my understanding.

6 HEARING OFFICER BOUILLON: And the
7 Committee will ask for a stipulation from all of
8 the parties that all parts of the FSA are deemed
9 admitted, Parts 1, 2, and 3, and all the testimony
10 contained therein, as well as the Application for
11 Certification as amended, and all of the
12 Applicant's written testimony, and all of the
13 Burney Resource Group's testimony which has been
14 referred to in these proceedings. Just in case we
15 missed something.

16 You so stipulate, Mr. Zischke?

17 MR. ZISCHKE: We agree. Yes.

18 MS. CROCKETT: We agree.

19 MS. HOLMES: We agree, but we note that
20 Staff filed at least one or two other documents in
21 addition to the FSA, so as long as the stipulation
22 includes those documents, as well --

23 HEARING OFFICER BOUILLON: Yes.

24 MS. HOLMES: -- we agree.

25 HEARING OFFICER BOUILLON: Everything --

1 everything that has been marked has been admitted,
2 with the sole exception as to Exhibit 74, which is
3 the expanded chart of table -- I believe Table 3.

4 MR. ZISCHKE: And two clarifying
5 questions. I'm not sure there's any reason to
6 brief any Part 1 topics that were heard before,
7 but this is briefing on the hearings as a whole,
8 including the hearings that were held last March
9 on Part 1. Correct? I mean, this is -- this is
10 briefing leading up to the proposed -- the
11 Presiding Member's Proposed Decision, so -- and
12 I'm not suggesting that there's briefing that
13 needs to occur. I just want to clarify so
14 everyone's clear, this is not limited to the last
15 two days of hearings. This is based on the record
16 leading up to the decision.

17 HEARING OFFICER BOUILLON: It was my
18 intention to limit it to the last two days of
19 hearings, with regard to the FSA Part 2 and Part 3
20 topics, including some which were reopened from
21 Part 1. For those topics that were concluded and
22 not reopened, I did not intend to ask for any
23 briefing. It was the Committee's --

24 MR. ZISCHKE: That's fine. Fine.

25 HEARING OFFICER BOUILLON: -- feeling

1 after those hearings that we did not --

2 MR. ZISCHKE: I just wanted to --

3 HEARING OFFICER BOUILLON: -- need any
4 briefing.

5 MR. ZISCHKE: -- okay, that's fine. I
6 understand that, and that makes sense.

7 Is there a complete exhibit list? I'm
8 not --

9 (Laughter.)

10 HEARING OFFICER BOUILLON: I don't
11 believe -- the Project Secretary will be preparing
12 one, and through Mr. Buell we will make it
13 available to all the parties. And I will work
14 with the Project Secretary to make sure that she
15 gets it out. And I would give you copies of mine,
16 but --

17 MR. ZISCHKE: No, that's great. Thank
18 you.

19 HEARING OFFICER BOUILLON: -- it would
20 not be very helpful at the moment.

21 MR. ZISCHKE: And if there is a
22 stipulation among the parties on Conditions, we
23 would submit that with a request to reopen the
24 record for the limited purpose of introducing that
25 stipulation, if that occurs.

1 HEARING OFFICER BOUILLON: If -- if you
2 feel that's necessary. If -- the facts are in the
3 record, and you both -- or all three come to a
4 similar conclusion about what those conditions
5 would be, and we don't need any additional facts,
6 there's really no need to reopen the record.

7 MR. ZISCHKE: It could simply be covered
8 in some other filing. In the brief, or whatever.
9 Thank you.

10 HEARING OFFICER BOUILLON: And hopefully
11 you can do that through the briefing process. I
12 encourage you to continue to work together.

13 We will adjourn the hearing at this
14 time. Mr. Keese.

15 PRESIDING MEMBER KEESE: And just thank
16 you for everybody for your participation. This
17 has been a -- believe it or not, this has been an
18 enjoyable hearing process. We -- we have some
19 cases that are not.

20 (Thereupon the Hearing was
21 concluded at 3:13 p.m.)

22
23
24
25

CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of December, 2000.

VALORIE PHILLIPS

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